



Legal Developments: Fourth Quarter, 2017

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Columbia Banking System, Inc.
Tacoma, Washington

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017-26 (October 6, 2017)

Columbia Banking System, Inc. (“Columbia”), Tacoma, Washington, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Pacific Continental Corporation (“Pacific”), and thereby indirectly acquire Pacific Continental Bank (“Pacific Bank”), both of Eugene, Oregon. Following the proposed merger, Pacific Bank would be merged into Columbia’s subsidiary bank, Columbia State Bank (“Columbia Bank”), Tacoma, Washington.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s rules (82 *Federal Register* 14728 (March 22, 2017)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Columbia, with consolidated assets of approximately \$9.5 billion, is the 132nd largest insured depository organization in the United States. Columbia controls approximately \$8.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Columbia controls Columbia Bank, which operates in Idaho, Oregon, and Washington. Columbia is the 7th largest insured depository organization in Oregon, controlling deposits of approximately \$2.7 billion in Oregon, which represent approximately 4 percent of the total deposits of insured depository institutions in that state.⁶ Columbia is the 8th largest insured depository organization in Washington, controlling deposits of approximately \$4.4 billion in

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Pacific Bank into Columbia Bank is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on August 23, 2017.

⁴ 12 CFR 262.3(b).

⁵ National asset and deposit data are as of March 31, 2017, unless otherwise noted.

⁶ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

Washington, which represent approximately 3 percent of the total deposits of insured depository institutions in that state.

Pacific, with consolidated assets of approximately \$2.6 billion, is the 332nd largest insured depository organization in the United States. Pacific controls approximately \$2.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Pacific controls Pacific Bank, which operates in Oregon and Washington. Pacific is the 12th largest insured depository organization in Oregon, controlling deposits of approximately \$1.3 billion in Oregon, which represent approximately 2 percent of the total deposits of insured depository institutions in that state. Pacific is the 28th largest insured depository organization in Washington, controlling deposits of approximately \$686.1 million in Washington, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Columbia would become the 111th largest depository organization in the United States, with consolidated assets of approximately \$12.1 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Columbia would control consolidated deposits of approximately \$10.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Oregon, Columbia would remain the 7th largest depository organization, controlling deposits of approximately \$4.1 billion, which represent approximately 6 percent of the total deposits of insured depository institutions in that state. In Washington, Columbia would become the 7th largest depository organization, controlling deposits of approximately \$5.1 billion, which represent approximately 4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁷ Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.⁸ In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.⁹

For purposes of the BHC Act, the home state of Columbia is Washington, and Pacific Bank is located in Oregon and Washington.¹⁰ Columbia is well capitalized and well

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

¹⁰ *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

managed under applicable law, and Columbia Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹¹ Oregon has no statutory minimum age requirement,¹² and Pacific Bank has been in existence for more than five years.

On consummation of the proposed transaction, Columbia would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Washington imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹³ The combined organization would control approximately 3.6 percent of the total amount of deposits of insured depository institutions in Washington and approximately 5.7 percent of the total amount of deposits of insured depository institutions in Oregon, the only states in which Columbia and Pacific have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including Columbia Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁴ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁵

Columbia and Pacific have subsidiary depository institutions that compete directly in the Eugene, Oregon, banking market (“Eugene market”); the Portland, Oregon-Washington, banking market (“Portland market”); and the Seattle, Washington, banking market (“Seattle market”).¹⁶ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that Columbia would control;¹⁷ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger

¹¹ 12 U.S.C. § 2901 *et seq.*

¹² Or. Rev. Stat. § 713.270.

¹³ Wash. Rev. Code § 30A.49.125(6). Oregon does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ 12 U.S.C. § 1842(c)(1)(B).

¹⁶ The Eugene market is defined as the Eugene metropolitan area in Lane and Linn counties, both of Oregon. The Portland market is defined as the Portland metropolitan area in Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill counties, all of Oregon; and Clark County, Washington. The Seattle market is defined as the Seattle metropolitan area in King, Pierce, and Snohomish counties; the southeastern portion of Island County; and Bainbridge Island in Kitsap County, all of Washington.

¹⁷ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁸ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Eugene, Portland, and Seattle markets. On consummation of the proposal, the Eugene, Portland, and Seattle markets would each remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.¹⁹

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Eugene, Portland, or Seattle markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁰ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as

¹⁸ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁹ Columbia operates the 13th largest depository institution in the Eugene market, controlling approximately \$30.4 million in deposits, which represent 0.7 percent of market deposits. Pacific operates the largest depository institution in the same market, controlling deposits of approximately \$855.2 million, which represent approximately 18.2 percent of market deposits. On consummation of the proposed transaction, Columbia would become the largest depository organization in the market, controlling deposits of approximately \$885.6 million, which represent approximately 18.9 percent of market deposits. The HHI for the Eugene market would increase by 24 points to 1277, and 13 competitors would remain in the market.

Columbia operates the 8th largest depository institution in the Portland market, controlling approximately \$1.2 billion in deposits, which represent 2.8 percent of market deposits. Pacific operates the 9th largest depository institution in the same market, controlling deposits of approximately \$575.0 million, which represent approximately 1.3 percent of market deposits. On consummation of the proposed transaction, Columbia would become the 7th largest depository organization in the market, controlling deposits of approximately \$1.8 billion, which represent approximately 4 percent of market deposits. The HHI for the Portland market would increase by 7 points to 1491, and 35 competitors would remain in the market.

Columbia operates the 7th largest depository institution in the Seattle market, controlling approximately \$3.0 billion in deposits, which represent 3 percent of market deposits. Pacific operates the 19th largest depository institution in the same market, controlling deposits of approximately \$596.3 million, which represent approximately 0.6 percent of market deposits. On consummation of the proposed transaction, Columbia would become the 6th largest depository organization in the market, controlling deposits of approximately \$3.6 billion, which represent approximately 3.6 percent of market deposits. The HHI for the Seattle market would increase by 3 points to 1272, and 53 competitors would remain in the market.

²⁰ 12 U.S.C. § 1842(c)(2), (5), and (6).

well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Columbia and Pacific are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured primarily as an exchange of shares.²¹ The asset quality, earnings, and liquidity of Columbia Bank and Pacific Bank are consistent with approval, and Columbia appears to have adequate resources to absorb the related costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Columbia, Pacific, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Columbia; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenter.

Columbia, Pacific, and their subsidiary depository institutions are each considered to be well managed. Columbia has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Columbia's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and Columbia's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Columbia's plans for implementing the proposal. Columbia has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Columbia would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Columbia's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Columbia plans to integrate Pacific's existing management and personnel in a manner that augments Columbia's management.²²

²¹ To effect the transaction, each share of Pacific common stock would be converted into a right to receive Columbia common stock, based on an exchange ratio.

²² Following consummation of the proposed transaction, a Pacific director will join the boards of directors of Columbia and Columbia Bank. Further, Columbia represents that additional key leaders from Pacific are expected to join Columbia.

Based on all the facts of record, including Columbia's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Columbia and Pacific in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²³ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁴ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁵

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Columbia Bank and Pacific Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Columbia; and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal on the basis of Columbia Bank's CRA performance. The commenter's concerns focus on alleged small business lending weaknesses in several counties in Oregon and Washington. Specifically, the commenter argued that the bank made a disproportionality small number of CRA-reportable small business loans from 2013 to 2015, as compared to other lenders, in four counties in Oregon and Washington. The commenter also commended Pacific Bank's practice of serving non-profit organizations, but questioned whether Columbia would continue this practice

²³ 12 U.S.C. § 1842(c)(2).

²⁴ 12 U.S.C. § 2901(b).

²⁵ 12 U.S.C. § 2903.

following consummation of the proposed transaction.²⁶ The commenter requested that the application include a forward-looking community benefits plan detailing how Columbia Bank would address the CRA-related concerns identified by the commenter.²⁷

Businesses of the Involved Institutions and Response to the Public Comment

Columbia operates primarily through Columbia Bank and provides a broad range of financial products and services to consumers and businesses. Through its network of branches across Idaho, Oregon, and Washington, the bank offers a variety of products and services, including checking, savings, and certificate of deposit accounts; commercial, residential, agricultural, and consumer loans; business checking and savings accounts; credit card and merchant card services; wealth management services; and international banking.

Pacific operates primarily through Pacific Bank and offers a range of retail and commercial banking products and services through branches in Oregon and Washington. Its products and services include checking, savings, and certificate of deposit accounts; merchant card services; wealth management; and mobile banking. Pacific Bank focuses on commercial lending to community-based businesses, healthcare professionals, and non-profit organizations.

Columbia disputes the commenter's allegations regarding its small business lending record and asserts that Columbia Bank is fully committed to meeting its responsibilities under the CRA. Columbia challenges the methodology used by the commenter in reaching its conclusions about the bank's lending record and asserts that using a different methodology would result in a more meaningful measure of the community impact of the bank's lending in the communities it serves. Columbia represents that it offers a wide range of small business products, engages in outreach to small businesses, including through partnerships with community organizations, and is consistently seeking ways to improve its performance. Columbia notes that it offers a large suite of secured and unsecured small business loan products, in amounts starting as low as \$500 and going up to \$1,000,000, and has a centralized small business lending team. The bank further notes that it engages in targeted marketing to small businesses through television, online, and branch location promotions and advertisements, as well as through numerous established community partnerships.

Columbia represents that the bank has migrated the majority of its small business lending to a centralized underwriting environment to ensure an objective, systematic, and consistent process across its footprint. According to Columbia, lending decisions are guided by Columbia Bank's credit policies with an overarching goal of increasing the bank's capacity to originate higher volumes of loans to businesses in its communities in a fair and consistent way. If a loan does not meet approval guidelines for Columbia Bank's standard loan

²⁶ While recognizing that Columbia Bank is primarily a commercial lender, the commenter also encouraged the bank to consider initiatives and partnerships with community groups that would enable it to play a more active role in providing access to homeownership to LMI and minority individuals.

²⁷ The commenter noted Columbia Bank's "Low Satisfactory" ratings on the Lending and Service Tests for the state of Oregon and the Portland-Vancouver-Hillsboro Metropolitan Statistical Area ("MSA"), and on the Service Test for the state of Washington, in the bank's 2014 CRA examination, and asserted that the bank's community benefits plan should indicate how the bank would improve its performance in these areas. The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. *See, e.g., United Bancshares, Inc.*, FRB Order No. 2017-10 at 12 n. 28 (April 6, 2017); *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA Assessment Areas ("AAs").

products, Columbia represents that the application is reviewed for eligibility for a range of Small Business Administration programs.²⁸

In response to the commenter's concerns about Columbia's commitment to continuing Pacific Bank's efforts in serving non-profit organizations, Columbia asserts that it plans to retain, and potentially expand across its footprint, the successful aspects of Pacific Bank's work with the non-profit community.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁹ In this case, the Board considered the supervisory views of the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁰ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),³¹ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income

²⁸ In response to the commenter's encouragement to Columbia Bank to consider initiatives and partnerships that would allow it to play a more active role in providing homeownership access to LMI and minority individuals, Columbia asserts that even though the bank primarily focuses on commercial banking, it offers residential loan products and a full range of secondary market-qualifying mortgage loan products in its AAs. Columbia represents that it will consider engaging in new initiatives and partnerships aimed at these goals.

²⁹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³⁰ 12 U.S.C. § 2906.

³¹ 12 U.S.C. § 2801 *et seq.*

individuals;³² (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Columbia Bank

Columbia Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 30, 2017 ("Columbia Bank Evaluation").³³ The bank received a "Low Satisfactory" rating for the Lending Test, an "Outstanding" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.³⁴ Although Columbia Bank's overall rating took into consideration its performance in each of its state and multistate metropolitan AAs, examiners gave the greatest weight to Columbia Bank's performance in the states of Washington and Oregon, and the Portland-Vancouver CSA, given that Columbia Bank's loan production and branch infrastructure are concentrated in those areas.³⁵ Examiners noted that the scope of the CRA evaluation was influenced by a CRA-related comment that was received from a community group during the onsite examination.³⁶

For the Lending Test, examiners found that Columbia Bank's overall lending activity reflected good responsiveness to the credit needs of its combined AA. Examiners found that the bank originated a substantial majority of small business, small farm, and home mortgage loans within its AAs and that the geographic distribution of loans reflected good penetration throughout its AAs.³⁷ Examiners also found that Columbia Bank utilized innovative and/or flexible lending practices to serve community credit needs, including those of small businesses.³⁸ Examiners found that Columbia Bank's overall distribution of borrowers reflected poor penetration among businesses of different sizes and retail customers of different income levels; however, the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, including low-income individuals and/or very small businesses, consistent with safe and sound banking practices. Further, examiners found that the bank originated a relatively high level of community development loans, the majority of which were directed toward affordable housing, which examiners cited as a credit need identified by community contacts within the bank's AAs.

³² Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

³³ The Columbia Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The examiners reviewed residential mortgage, small business, and farm loans from January 1, 2014, through December 31, 2016. The evaluation period for community development lending, investments, and services was March 31, 2014, through March 30, 2017.

³⁴ The Columbia Bank Evaluation included full-scope evaluations of the Seattle-Tacoma, Washington, Combined Statistical Area ("CSA"); the Portland-Vancouver-Salem, Multi-State CSA ("Portland-Vancouver CSA"); Non-Metropolitan, Oregon Non-Metropolitan Statistical Area ("Non-MSA"), and Non-Metropolitan, Idaho Non-MSA. Limited-scope evaluations were performed in the Kennewick-Richland, Washington MSA; Spokane-Spokane Valley, Washington MSA; Bellingham, Washington MSA; Yakima, Washington MSA; Longview, Washington MSA; Lewiston, Idaho - Washington MSA; Walla-Walla, Washington MSA; Non-Metropolitan, Washington Non-MSA; Bend-Redmond, Oregon, MSA; Salem, Oregon MSA; Eugene-Springfield, Oregon MSA; Boise City, Idaho MSA; and Coeur D'Alene, Idaho MSA.

³⁵ Columbia Bank received a "Satisfactory" overall rating in each of its state and multistate metropolitan AAs.

³⁶ That comment is identical to the comment that was submitted on this proposal.

³⁷ Examiners noted that the geographic distribution of loans was assessed by comparing the institution's lending performance in LMI geographies to aggregate data for the institution or the performance of other lenders, while considering relevant demographic information.

³⁸ Examiners noted that these programs included Small Business Administration loans, Washington State's Linked Deposit Program, and Business Oregon's Capital Access Program.

For the states of Oregon and Washington and the Portland-Vancouver CSA,³⁹ all areas of concern to the commenter, examiners found that Columbia Bank's lending levels reflected good responsiveness to AA credit needs overall. Columbia Bank's small business market share exceeded its deposit share in Oregon, Washington, and the Portland-Vancouver CSA. Examiners found that the geographic distribution of small business loans reflected excellent dispersion in Washington and the Portland-Vancouver CSA, and adequate dispersion in Oregon. Further, examiners determined that the bank made a relatively high level of community development loans in its Oregon AAs, and an adequate level in its Washington AAs and the Portland-Vancouver CSA.

Examiners found that Columbia Bank used innovative and/or flexible lending practices in Oregon, Washington, and the Portland-Vancouver CSA. The distribution of loans reflected adequate penetration among businesses of different sizes and among customers of different income levels in Oregon, but poor penetration among businesses of different sizes and among customers of different income levels in Washington and the Portland-Vancouver CSA. In each of these geographic areas, examiners found that the distribution of small farm borrowers reflected excellent penetration among farm customers of different sizes. Examiners identified possible contributing factors for poor lending penetration among businesses of different sizes in certain AAs, including Columbia Bank's recent formation of a Small Business Lending Center, which led to more consistent underwriting for small business loans and increased consideration of affiliate income in credit decisions. Examiners also noted that Columbia Bank continued to interact with community groups in hopes of addressing, through a cooperative working relationship, any small business lending concerns raised by the CRA-related comment.

Examiners found that, overall, the bank had an excellent level of qualified community development investments and grants, particularly those that were not routinely provided by private investors. Examiners noted that the bank's investments supported economic development and the provision of affordable housing. Examiners further observed that the bank's qualified investments and grants during the evaluation period represented a significant increase from the prior evaluation period. In the states of Washington and Oregon and the Portland-Vancouver CSA, examiners found that the bank had excellent levels of community development investments and grants and that the bank exhibited good responsiveness to credit and community development needs.

Examiners found that Columbia Bank's delivery systems were accessible to all portions of its AAs. To the extent changes had been made, examiners noted that the bank's opening and closing of branches generally had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and/or to LMI individuals. Examiners found that services did not vary in a way that inconvenienced portions of the AAs, particularly LMI geographies and/or LMI individuals. Examiners noted that Columbia Bank provided a relatively high level of community development services given its size and resources.

In the states of Washington and Oregon, examiners rated Columbia Bank "High Satisfactory" for the Service Test, while in the Portland-Vancouver CSA, examiners rated Columbia Bank "Low Satisfactory." In both states and the Portland-Vancouver CSA, examiners found that the opening and closing of branches generally had not adversely affected the accessibility of delivery systems in the bank's AAs, particularly in LMI geographies and/or to LMI individuals. Examiners also found that in the states of Oregon and Washington, Columbia Bank's business hours did not vary in a way that inconvenienced

³⁹ For purposes of the Columbia Bank Evaluation, the Portland-Vancouver CSA was not included in either the State of Oregon or the State of Washington ratings.

portions of the AAs, particularly LMI geographies and/or LMI individuals. For the Portland-Vancouver CSA, examiners noted that Columbia Bank's business hours and services were tailored to the convenience and needs of the AAs, particularly LMI geographies and/or LMI individuals. Examiners found that Columbia Bank provided a relatively high level of community development services in the states of Oregon and Washington, but a limited level of community development services in the Portland-Vancouver CSA.

CRA Performance of Pacific Bank

Pacific Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of February 24, 2014 ("Pacific Bank Evaluation").⁴⁰ The bank received a "High Satisfactory" rating for the Lending Test and a "Low Satisfactory" rating for the Investment Test and the Service Test.⁴¹ Examiners noted that the bank's performance in the Eugene AA was weighted the most heavily in the overall rating.

Examiners concluded that Pacific Bank's lending activity reflected excellent responsiveness to the credit needs of its combined AAs and that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged individuals and very small businesses. Examiners also found that the bank originated a majority of loans inside its AAs.

Examiners found that the geographic distribution of the bank's loans reflected excellent penetration throughout the combined AAs, particularly in LMI geographies. The distribution of the bank's borrowers reflected good penetration among businesses of different sizes. Further, examiners found that the bank made an adequate level of community development loans.

Examiners determined that the bank made an adequate level of qualified community development investments and grants, although rarely in a leadership position. Further, examiners concluded that Pacific Bank's branch locations, banking hours, and alternative delivery systems were readily accessible to all portions of its AAs, including LMI geographies and individuals, and that services did not vary in a way that inconvenienced portions of its AAs. Moreover, examiners concluded that the bank provided an adequate level of qualified community development services during the review period.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Columbia Bank's CRA, consumer compliance, and fair lending records. The Board has considered the results of a recent consumer compliance examination of Columbia Bank conducted by FDIC examiners, which included a review of Columbia Bank's policies and procedures for complying with fair lending and other consumer compliance laws. The Board also considered and consulted with the FDIC regarding the recently conducted CRA evaluation of Columbia Bank, the scope of which was impacted by the comment on this proposal. The FDIC considered the same comment that was submitted to the Board in connection with

⁴⁰ The Pacific Bank Evaluation was conducted using the Large Bank Examination Procedures. Examiners reviewed small business loans from 2011 through 2013. Examiners did not review home mortgage loans reported pursuant to HMDA data-collection requirements or small farm loans. The evaluation period for community development loans, investments, and services was from January 25, 2011, through February 23, 2014.

⁴¹ The Pacific Bank Evaluation included full-scope evaluations of three AAs: the Eugene AA (composed of Lane County in Oregon); the Portland-Vancouver-Beaverton AA (composed of Multnomah, Clackamas, and Washington counties in Oregon, and Clark County in Washington); and the Seattle AA (composed of King County, Washington).

its review of the merger of Columbia Bank and Pacific Bank, and, after a complete review of the record, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the bank merger without conditions.

The Board has taken the results of the FDIC's examinations and its consultations with the FDIC into account in evaluating this proposal, including in considering whether Columbia Bank has the experience and resources to ensure that policies and programs are implemented in a manner that would allow the combined organization to effectively serve the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Columbia represents that, following consummation of the proposed transaction, the combined organization would have an enhanced ability to meet the convenience and needs of the community, which would benefit customers of Columbia Bank and legacy customers of Pacific Bank. Columbia represents that the current suite of products and services offered by each bank would continue to be available, and Pacific Bank's customers would benefit from an expanded suite of business and consumer products and services, including import and export letters of credit and documentary collections, same-day ACH origination, mobile wallet debit card functions, consumer credit cards, foundation accounts, and home equity lines of credit that include a fixed-rate conversion option. Further, Columbia represents that existing and future customers of both banks would benefit from a larger branch network.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the FDIC, confidential supervisory information, information provided by Columbia, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."⁴²

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the

⁴² Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

resulting firm.⁴³ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴⁴

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁵

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.⁴⁶ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Columbia with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

⁴³ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

⁴⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

⁴⁵ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

⁴⁶ Columbia primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, wealth management, private banking, investment advisory and management services, trust services and operations, and treasury management. Pacific offers commercial and consumer banking services, commercial real estate lending, and treasury management. In each of the activities in which it engages, Columbia has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of San Francisco, acting under delegated authority.

By order of the Board of Governors, effective October 6, 2017.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

Reliable Community Bancshares, Inc .
Perryville, Missouri

MAB Acquisition Corp.
Perryville, Missouri

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2017–28 (October 26, 2017)

Reliable Community Bancshares, Inc. (“Reliable”), a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ and its subsidiary, MAB Acquisition Corp. (“MAB,” and together with Reliable, “Applicants”), both of Perryville, Missouri, have requested the Board’s approval under section 3 of the BHC Act² to acquire Mid America Banking Corporation (“Mid America”), Rolla, and thereby indirectly acquire Mid America Bank & Trust Company (“Mid America Bank”), Dixon, both of Missouri. As part of the proposal, MAB would become a bank holding company. Following the proposed acquisition, Mid America Bank would be merged into Reliable’s subsidiary bank, The Bank of Missouri (“Bank of Missouri”), Perryville, Missouri.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 95613 (December 28, 2016)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Reliable, with consolidated assets of approximately \$1.4 billion, is the 541st largest insured depository organization in the United States.⁵ Reliable controls approximately \$1.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Reliable controls Bank of Missouri, which operates only in Missouri. Reliable is the 22nd largest insured depository organization in Missouri, controlling deposits of approximately \$1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷

Mid America, with consolidated assets of approximately \$159.0 million, is the 3407th largest insured depository organization in the United States. Mid America controls approximately \$122.6 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Mid America controls Mid America Bank, which operates only in Missouri.⁸ Mid America is the 153rd largest insured depository organization in Missouri, controlling deposits of

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Mid America Bank into Bank of Missouri, which is not expected to occur for some time following Applicants’ acquisition of Mid America, is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) pursuant to section 18(c) of the Federal Deposit Insurance Corporation Act. 12 U.S.C. § 1828(c).

⁴ 12 CFR 262.3(b).

⁵ National asset and deposit data, market share, and ranking are as of June 30, 2017, unless otherwise noted.

⁶ In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.

⁷ State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

⁸ The proposal does not raise interstate issues under section 3(d) of the BHC Act because Missouri is the home state of both Reliable and Mid America Bank, and Mid America Bank operates only in Missouri. See 12 U.S.C. § 1842(d).

approximately \$123.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Reliable would become the 495th largest insured depository organization in the United States, with consolidated assets of approximately \$1.5 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Reliable would control consolidated deposits of approximately \$1.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Missouri, Reliable would remain the 22nd largest depository organization, controlling deposits of approximately \$1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁹ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰

Bank of Missouri and Mid America Bank do not compete directly in any banking market. The Department of Justice has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹¹ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important.

⁹ 12 U.S.C. § 1842(c)(1)(A).

¹⁰ 12 U.S.C. § 1842(c)(1)(B).

¹¹ 12 U.S.C. § 1842(c)(2), (5), and (6).

The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Reliable and Bank of Missouri are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.¹² The asset quality, earnings, and liquidity of both Bank of Missouri and Mid America Bank are consistent with approval, and Reliable appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Reliable, Mid America, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Reliable, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Reliable and its subsidiary depository institution are considered to be well managed. Reliable's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and Reliable's risk-management program appears consistent with approval of this expansionary proposal. The Board also has considered Reliable's plans for implementing the proposal. Reliable has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Reliable would implement a combination of its own and Mid America's risk-management policies, procedures, and controls at the combined organization, and this combination is considered acceptable from a supervisory perspective. In addition, Reliable's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all the facts of record, including Reliable's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Reliable and Mid America in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹³ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board

¹² Applicants would effect the acquisition by merging Mid America with and into MAB, with MAB as the survivor. At the time of the merger, each share of Mid America common stock would be converted into a right to receive Reliable common stock and/or cash, based on an exchange ratio. Reliable would fund the cash portion of the exchange primarily through a third-party loan. Any additional cash needed in connection with the acquisition would be funded by a dividend from Bank of Missouri to Reliable.

¹³ 12 U.S.C. § 1842(c)(2).

places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act of 1977 (“CRA”).¹⁴ The CRA requires the federal financial supervisory agencies to encourage depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions’ safe and sound operation,¹⁵ and requires the appropriate federal supervisory agency to assess a depository institution’s record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.¹⁶

In addition, the Board considers the banks’ overall compliance records and their recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board also may consider the institution’s business model, its marketing and outreach plans, the organization’s plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Bank of Missouri and Mid America Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, and information provided by Reliable.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.¹⁷ In this case, the Board considered the views of the Federal Reserve Bank of St. Louis (“Reserve Bank”) and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods.¹⁸ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution’s primary federal supervisor of the institution’s overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution’s lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution’s data reported under the Home Mortgage Disclosure Act of

¹⁴ 12 U.S.C. §2901 *et seq.*

¹⁵ 12 U.S.C. § 2901(b).

¹⁶ 12 U.S.C. § 2903.

¹⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

¹⁸ 12 U.S.C. § 2906.

1975 (“HMDA”),¹⁹ automated loan reports, and other reports generated by the institution to assess an institution’s lending activities with respect to borrowers and geographies of different income levels. The institution’s lending performance is based on the institution’s loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas (“AAs”), record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance.²⁰ Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments, the extent to which they provide community development services, and their responsiveness to community development lending, investment, and service needs.²¹

CRA Performance of Bank of Missouri

Bank of Missouri was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of January 26, 2015 (“Bank of Missouri Evaluation”).²² The bank received “Satisfactory” ratings for each of the Lending Test and the Community Development Test.

Examiners found that Bank of Missouri’s average net loan-to deposit ratio, which is a measure of the overall level of lending, was reasonable given the asset size and financial condition of the bank. Examiners also found that a substantial majority of the bank’s HMDA and small business loans was originated within the bank’s AAs, illustrating a commitment to meeting the credit needs of these areas, and that the geographic distribution of loans reflected a reasonable dispersion within the bank’s AAs. Examiners noted that the bank’s loan distribution by borrower income characteristics reflected a reasonable penetration among businesses of different revenue sizes and among individuals of different income levels. Further, examiners noted that Bank of Missouri had not received any CRA complaints since the bank’s previous CRA evaluation.

Examiners also determined that Bank of Missouri demonstrated an adequate responsiveness to the community development needs of its AAs through qualified community development lending, investment, and service activity, considering the capacity of the bank and the need for and availability of such opportunities.

CRA Performance of Mid America Bank

Mid America Bank was assigned an overall rating of “Needs to Improve” at its most recent CRA performance evaluation by the Reserve Bank, as of April 22, 2013 (“Mid America

¹⁹ 12 U.S.C. § 2801 *et seq.*

²⁰ See 12 CFR 228.26(b).

²¹ See 12 CFR 228.26(c).

²² The Bank of Missouri Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed HMDA loans reported by Bank of Missouri in 2012, 2013, and the first three quarters of 2014, and small business loans originated by the bank between January 1, 2014, and December 18, 2014. For the Community Development Test, examiners reviewed community development lending, investments, and services based on data from July 23, 2012, through January 26, 2015. The Bank of Missouri Evaluation covered the bank’s seven AAs, including full-scope reviews of the Cape Girardeau, Missouri; Columbia, Missouri; Perryville, Missouri; and Springfield, Missouri, AAs and limited-scope reviews of the bank’s Branson, Missouri; Scott City, Missouri; and Poplar Bluff, Missouri, AAs.

Bank Evaluation”).²³ Examiners noted that this rating was primarily based on the bank’s substantive violations of section 5 of the Federal Trade Commission Act (“FTC Act”), which prohibits unfair or deceptive acts or practices, and the bank’s lack of adequate controls in place to prevent such practices.²⁴ The Board has entered into a Consent Order with Mid America Bank for these violations of section 5 of the FTC Act, which occurred as a result of practices related to Mid America’s balance transfer credit card portfolios offered to consumers through third parties. Pursuant to the Consent Order, Mid America Bank has agreed to pay restitution of approximately \$5 million to affected cardholders and to submit to the Reserve Bank a written plan to strengthen the oversight by Mid America Bank’s board of directors of the bank’s compliance risk management program. This order is conditioned on Reliable’s compliance with a commitment to cause Bank of Missouri, as successor to Mid America Bank, to comply with the obligations of the Consent Order.

Examiners found that Mid America Bank’s loan distribution among borrowers of different income levels, including LMI borrowers, and among businesses of different revenue sizes, was reasonable. However, examiners noted that the bank’s geographic distribution of loans reflected poor dispersion throughout the bank’s AA. Examiners noted that the bank’s CRA performance would have been considered satisfactory but for the bank’s violations of the FTC Act.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the FDIC regarding Bank of Missouri’s CRA, consumer compliance, and fair lending records. The Board has considered the results of the most recent consumer compliance examination of Bank of Missouri conducted by the FDIC, which included a review of the bank’s compliance risk-management program and the bank’s compliance with consumer protection laws and regulations. The Board also has considered the results of the most recent consumer compliance examination of Mid America Bank conducted by the Reserve Bank, actions Mid America Bank has committed to take to address its past violations of section 5 of the FTC Act, and actions Mid America Bank has already taken to strengthen its current and future compliance with section 5 of the FTC Act.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Reliable represents that it has no plans to discontinue any significant product or service currently offered by Bank of Missouri or Mid America Bank. Reliable also represents that, following the proposed transaction, customers of Mid America Bank would have access to a broader range of products and services than those currently available to Mid America Bank customers. Additionally, Reliable represents that customers of Mid America Bank would benefit from a more expansive branch network. Reliable asserts that, following the proposed transaction, Bank of Missouri would continue to provide a level of service consistent with or exceeding Bank of Missouri’s current CRA performance. Reliable represents that Bank of Missouri would be able to integrate Mid America Bank’s business into its operations in a manner that would prevent further violations of law such as those noted in the Mid America Bank Evaluation.

²³ The Mid America Bank Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed loans originated by the bank from January 1, 2012, through December 31, 2012. The Mid America Bank Evaluation included a review of the bank’s AA, which includes all of Phelps and Pulaski counties, Missouri, and the southern portion of Maries County, Missouri.

²⁴ 5 U.S.C. § 45.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, consultation with the FDIC, confidential supervisory information, information provided by Reliable, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."²⁵

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.²⁶ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.²⁷

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to propose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.²⁸

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in a variety of consumer and

²⁵ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

²⁶ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

²⁷ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

²⁸ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

commercial banking activities.²⁹ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective October 26, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

²⁹ Reliable primarily offers consumer and business loan and deposit products, with a focus on commercial and home mortgage lending. Mid America primarily offers commercial, residential, and consumer loan and deposit products. In each of the activities in which it engages, Reliable has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

First Horizon National Corporation Memphis, Tennessee

Order Approving the Merger of Bank Holding Companies *FRB Order No. 2017-29 (October 30, 2017)*

First Horizon National Corporation (“First Horizon”), Memphis, Tennessee, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Capital Bank Financial Corp. (“CBFC”), Charlotte, North Carolina, and thereby indirectly acquire CBFC’s subsidiary bank, Capital Bank Corp. (“Capital Bank”), Raleigh, North Carolina. Following the proposed merger, Capital Bank would be merged into First Horizon’s subsidiary bank, First Tennessee Bank, National Association (“First Tennessee Bank”), also of Memphis, Tennessee.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 28659 (June 23, 2017)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

First Horizon, with consolidated assets of approximately \$29.4 billion, is the 64th largest insured depository organization in the United States. First Horizon controls approximately \$22.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ First Horizon controls First Tennessee Bank, which operates in Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. First Horizon is the largest insured depository organization in Tennessee, controlling deposits of approximately \$19.8 billion, which represent 14.3 percent of the total deposits of insured depository institutions in that state. First Horizon is the 31st largest insured depository organization in North Carolina, controlling deposits of approximately \$542.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 117th largest insured depository organization in Virginia, controlling deposits of approximately \$14.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 82nd largest insured depository organization in South Carolina, controlling deposits of approximately \$11.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. First Horizon is the 220th largest insured depository organization in Florida, controlling deposits of approximately \$1.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁶

CBFC, with consolidated assets of approximately \$10.1 billion, is the 127th largest insured depository organization in the United States. CBFC controls approximately \$8.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. CBFC controls Capital Bank, which operates

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Capital Bank into First Tennessee Bank, which is expected to occur immediately after First Horizon’s merger with CBFC, is subject to the approval of the Office of the Comptroller of the Currency (“OCC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on October 16, 2017.

⁴ 12 CFR 262.3(b).

⁵ Nationwide asset and deposit data are as of June 30, 2017, unless otherwise noted.

⁶ State deposit data are as of June 30, 2016, unless otherwise noted.

in Florida, North Carolina, South Carolina, Tennessee, and Virginia. CBFC is the 15th largest insured depository organization in Tennessee, controlling deposits of approximately \$1.5 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state. CBFC is the 9th largest insured depository organization in North Carolina, controlling deposits of approximately \$4.4 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state. CBFC is the 29th largest insured depository organization in South Carolina, controlling deposits of approximately \$370.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. CBFC is the 39th largest insured depository organization in Florida, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. CBFC is the 111th largest insured depository organization in Virginia, controlling deposits of approximately \$26.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Horizon would become the 54th largest insured depository organization in the United States, with consolidated assets of approximately \$40 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. First Horizon would control total deposits of approximately \$30.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, First Horizon would remain the largest insured depository organization, controlling deposits of approximately \$21.3 billion, which represent approximately 15.4 percent of the total deposits of insured depository institutions in that state. In North Carolina, First Horizon would become the 8th largest insured depository organization, controlling deposits of approximately \$4.9 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state. In South Carolina, First Horizon would become the 28th largest insured depository organization, controlling deposits of approximately \$381.8 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Florida, First Horizon would become the 39th largest insured depository organization, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Virginia, First Horizon would become the 104th largest insured depository organization, controlling deposits of approximately \$40.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.⁷ Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.⁸ In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company, upon consummation, would control 30 percent or

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.⁹

For purposes of the BHC Act, the home state of First Horizon is Tennessee, and Capital Bank is located in North Carolina, South Carolina, Tennessee, Virginia, and Florida.¹⁰ First Horizon is well capitalized and well managed under applicable law, and First Tennessee Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹¹ There are no minimum age requirements under the laws of North Carolina, South Carolina, Virginia, or Florida that would apply to First Horizon’s acquisition of CBFC, and Capital Bank has been in existence for more than five years.¹²

On consummation of the proposed transaction, First Horizon would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, First Horizon would not control 30 percent or more of the total deposits of insured depository institutions in any state in which First Horizon and CBFC have overlapping banking operations.¹³ The Board has considered all other requirements under section 3(d) of the BHC Act, including First Tennessee Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁴ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹⁵

First Horizon and CBFC have subsidiary depository institutions that compete directly in 11 banking markets in North Carolina, South Carolina, and Tennessee.¹⁶ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market

⁹ 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

¹⁰ *See* 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

¹¹ 12 U.S.C. § 2901 *et seq.*

¹² *See* N.C. Gen. Stat. ch. 53C; S.C. Code Ann. §§ 34-25-50 and 34-25; Va. Code Ann. §6.2-849 – 859; Fla. Stat. § 658.2953.

¹³ Tennessee, South Carolina, and Florida impose a 30 percent limit on deposit concentration within their states. *See* Tenn. Code Ann § 45-2-1404; S.C. Code Ann. §34-25-240; Fla. Stat. § 658.2953(5)(b). North Carolina and Virginia do not have any such restrictions.

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ 12 U.S.C. § 1842(c)(1)(B).

¹⁶ All of these banking markets are defined in the Appendix, except for the Greene County banking market (“Greene County market”); the Lawrence County banking market (“Lawrence County market”); and the Morristown area banking market (“Morristown area market”), all in Tennessee, which are defined in the discussion below.

(“market deposits”) that First Horizon would control;¹⁷ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁸ other characteristics of the markets; and, as discussed below, commitments made by First Horizon to divest two Capital Bank branches in the Greene County market.

Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Johnson City-Bristol, Knoxville, Nashville, Sevierville, Raleigh, Winston-Salem, Charlotte, and Charleston markets.¹⁹ On consummation of the proposal, the change in the HHI in the Nashville market would be small, and the market would remain unconcentrated. The change in the HHI in the Johnson City-Bristol, Knoxville, Sevierville, Raleigh, and Charleston markets would be small, and the markets would remain moderately concentrated. The Winston-Salem and Charlotte markets would remain highly concentrated, but the changes in the HHI in these markets would be small. In each of these banking markets, numerous competitors would remain.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Greene County, Lawrence County, and Morristown area markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Greene County, Tennessee, Banking Market. Using initial screening data, First Horizon is the third largest depository organization in the Greene County market, controlling approximately \$181.7 million in deposits, which represent approximately 22.5 percent of market deposits.²⁰ CBFC is the largest depository organization in the Greene County market, controlling approximately \$211.6 million in deposits, which represent approximately 26.2 percent of market deposits. On consummation, First Horizon would become the largest depository organization in the Greene County market, controlling approximately \$359.6 million in market deposits, which would represent approximately 48.6 percent of market deposits. The HHI in this market would increase by 1175 points, from 1981 to 3156.

¹⁷ Local deposit and market share data are as of June 30, 2016, and, unless otherwise indicated, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁸ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁹ The competitive effects of the proposal in these markets are described in the Appendix.

²⁰ The Greene County market is defined as Greene County, Tennessee.

To mitigate the potentially adverse competitive effects of the proposal in the Greene County market, First Horizon has committed to divest two of Capital Bank's six branches in the Greene County market to a competitively suitable purchaser.²¹ In addition to the divestiture, the Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Greene County market.²² The competitive effects are mitigated by several factors that indicate that the increase in concentration in the Greene County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market. One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Greene County market,²³ as measured in terms of the ratios of those types of loans to total loans and assets.²⁴ The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, two credit unions exert a competitive influence in the Greene County market. Both institutions offer a wide range of consumer banking products, operate street-level branches, and have broad membership criteria that include almost all of the residents in the market.²⁵ The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

After accounting for the branch divestitures and weighting the deposits of the thrift at 100 percent and the credit unions at 50 percent, First Horizon would control approximately

²¹ As a condition of consummating the proposal, First Horizon has committed that it will execute, before consummation of the proposal, a sales agreement with a competitively suitable institution for the sale of the two branches. First Horizon also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Horizon has committed that, if the proposed divestiture is not completed within the 180-day period, First Horizon would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See, e.g., BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

²² The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. *See NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

²³ The standard treatment of thrifts in the competitive analysis is to give their deposits 50-percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See, e.g., Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. *See, e.g., KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); and *Banknorth Group, Inc., supra*.

²⁴ This thrift institution has a ratio of commercial and industrial loans to assets of 9.6 percent. This is comparable to the ratio of some thrift institutions that the Board has previously found to be full competitors of commercial banks. *Id.*

²⁵ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

34.5 percent of market deposits, and the HHI would increase by 486 points to a level of 1934.²⁶ Although the adjusted levels still exceed the DOJ Bank Merger Guidelines, certain factors indicate that the competitive effects of the proposal would not likely be significantly adverse. After consummation of the proposal, a minimum of seven depository institutions would remain in the Greene County market. Further, First Horizon and CBFC engage in low levels of small business lending in the Greene County market, and analysis of available data suggests the transaction is unlikely to have an adverse competitive impact on small business lending in the market.²⁷ In addition, recent entry and expansionary activity suggests that the market is attractive to potential competitors. In 2016, one bank entered the market through an acquisition and a credit union entered the market de novo through the establishment of a branch. Further, a thrift established an additional branch in the market in April 2017.

Lawrence County, Tennessee, Banking Market. Using initial screening data, First Horizon is the fourth largest depository organization in the Lawrence County market, controlling approximately \$67.2 million in deposits, which represent approximately 11.3 percent of market deposits.²⁸ CBFC is the second largest depository organization in the Lawrence County market, controlling approximately \$87.8 million in deposits, which represent approximately 14.8 percent of market deposits. On consummation, First Horizon would become the second largest depository organization in the Lawrence County market, controlling approximately \$154.9 million in market deposits, which would represent approximately 26.1 percent of market deposits. The HHI in this market would increase by 334 points, from 1750 to 2084.

The competitive effects of the proposal in this market are mitigated by several factors that indicate that the increase in concentration in the Lawrence County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market. A credit union exerts a competitive influence in the Lawrence County market. This institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the market. Taking into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels, the Board finds that these circumstances warrant including the deposits of this credit union at a 50percent weight in estimating market influence. Taking into account this adjustment, First Horizon would control approximately 25.4 percent of market deposits upon consummation of the transaction, and the HHI effects of the transaction would exceed the DOJ Guidelines by a less significant amount, with an increase of 317 points to a level of 1988. Seven other insured depository institutions would remain in the market, including four with over 10 percent market share, one of which would have 30.5 percent market share. In addition, recent entry and expansionary activity suggests that the market is attractive to potential competitors. One bank entered the market de novo this year with the establishment of a loan production office.

Morristown Area, Tennessee, Banking Market. Based on initial screening data, First Horizon is the largest depository organization in the Morristown area market, controlling approximately \$228.8 million in deposits, which represent approximately 23.7 percent of market deposits.²⁹ CBFC is the sixth largest depository organization in the Morristown

²⁶ This analysis assumes that both branches are divested to an out-of-market firm. Any potential purchaser must be deemed competitively suitable by the Board.

²⁷ Analysis of the Greene County market using available data on small business lending results in an HHI reflective of a highly concentrated market, but the increase in the HHI following the merger would be minimal.

²⁸ The Lawrence County market is defined as Lawrence County, Tennessee.

²⁹ The Morristown market is defined as Hamblen County, eastern Grainger County, and northern Jefferson County, all in Tennessee.

area market, controlling approximately \$61.9 million in deposits, which represent approximately 6.4 percent of market deposits. On consummation, First Horizon would remain the largest depository organization in the Morristown area market, controlling approximately \$290.8 million in market deposits, which would represent approximately 30.1 percent of market deposits. The HHI in this market would increase by 303 points, from 1540 to 1843.

Factors indicate that the increase in concentration in the Morristown area market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, four credit unions exert a competitive influence in the Morristown area market. These institutions offer a wide range of consumer banking products, operate street-level branches, and have broad membership criteria that include almost all of the residents in the market. The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels. Adjusting to reflect competition by these credit unions, the market concentration level in the Morristown area market as measured by the HHI would increase by 214 points, from a level of 1183 to 1397, the market share of First Horizon resulting from the transaction would be 25.3 percent, and numerous competitors would remain.

Conclusion Regarding Competitive Effects

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal, with the proposed divestiture of branches in the Greene County market, would not likely have a significantly adverse effect on competition in any relevant banking market, including the aforementioned markets. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on the facts of record, including the proposed divestiture commitments, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the 11 banking markets in which First Horizon and CBFC compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.³⁰ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital

³⁰ 12 U.S.C. § 1842(c)(2), (5), and (6).

adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Horizon and CBFC are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.³¹ The asset quality, earnings, and liquidity of both First Tennessee Bank and Capital Bank are consistent with approval, and First Horizon appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of First Horizon, CBFC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Horizon; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenters.

First Horizon, CBFC, and their subsidiary depository institutions are each considered to be well managed. First Horizon has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of First Horizon have substantial knowledge of and experience in the banking and financial services sectors, and First Horizon's risk-management program appears consistent with approval of this expansionary proposal.³²

The Board also has considered First Horizon's plans for implementing the proposal. First Horizon has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. First Horizon would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First Horizon's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and First Horizon plans to integrate CBFC's existing management and personnel in a manner that augments First Horizon's management.³³

³¹ As part of the proposed transaction, each share of CBFC common stock would be converted into a right to receive cash or First Horizon common stock, or a combination of the two, based on a fixed exchange ratio. First Horizon has the financial resources to fund the transaction.

³² On February 8, 2017, the OCC entered into a consent order with First Tennessee Bank regarding unfair billing practices that the OCC identified related to an identity theft protection product that the bank offered through a third-party provider from 2000–2006. See *First Tennessee Bank, N.A.*, OCC Consent Order for a Civil Money Penalty, No. 2017-018 and 2017-015 (February 8, 2017). The Board has consulted with the OCC regarding this matter. The OCC indicated in First Tennessee Bank's most recent CRA performance evaluation that to remediate, the bank strengthened its risk-management policies and practices, discontinued the product altogether, including for existing customers, and developed a plan to reimburse fees paid by all customers. Further, the OCC reviewed information pertaining to this matter and other matters noted in the bank's CRA performance evaluation in connection with its review of First Tennessee Bank's application to merge with Capital Bank, and did not identify any concerns regarding such matters that would impact the proposed transaction. Letter from Stephen A. Lybarger, Deputy Comptroller for District Licensing, OCC, to Jason Cabral, Esq., Sullivan & Cromwell (October 16, 2017) ("OCC Letter dated October 16, 2017").

³³ Following consummation of the proposed transaction, two CBFC directors will join the boards of directors of First Horizon and First Tennessee Bank.

Based on all of the facts of record, including First Horizon's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of First Horizon and CBFC in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.³⁴ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,³⁵ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.³⁶

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of First Tennessee Bank and Capital Bank; the fair lending and compliance records of both banks; the supervisory views of the OCC, the Federal Deposit Insurance Corporation ("FDIC"), and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by First Horizon; and the public comments received on the proposal.

Public Comments on the Proposal

The Board received comments from over 20 commenters supporting the proposal. The commenters are charitable and community organizations, as well as businesses, that described benefits that First Horizon has provided to the communities that they serve. These commenters described various projects and partnerships between First Horizon and community groups that have benefited the community, including initiatives focused on enhancing economic mobility, financial services, and homeownership for LMI individuals. Commenters also highlighted First Horizon's support for organizations that provide finan-

³⁴ 12 U.S.C. § 1842(c)(2).

³⁵ 12 U.S.C. § 2901(b).

³⁶ 12 U.S.C. § 2903.

cial education services to individuals and capital access to underserved businesses, as well as an organization that provides various support services for the African American community in the Winston-Salem, North Carolina, area.

One commenter objected to the proposal based on alleged weaknesses in the CRA and fair lending records of First Tennessee Bank and Capital Bank. The commenter alleged that, based on data reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”)³⁷ and First Tennessee Bank’s most recent CRA performance evaluation, First Tennessee Bank has displayed a poor record of lending to LMI individuals and communities, particularly in North Carolina. The commenter also alleged that, throughout its footprint, First Tennessee Bank had low levels of lending to African American and Hispanic borrowers in 2016 and that its loan application denial rates were higher for such applicants than for white applicants.³⁸ The commenter also alleged that First Tennessee Bank has failed to meet commitments it made in its current multi-year CRA plan, including goals related to lending and marketing to LMI borrowers and in LMI geographies, lending to small businesses, community development activities, and products and services tailored to LMI borrowers and in LMI geographies.³⁹ The commenter argued that the application should not be approved absent First Horizon’s development of new plans and commitments to address alleged weaknesses in its fair lending and CRA programs and product and service offerings.⁴⁰ The commenter criticized First Tennessee Bank for its level of qualified community development investments in North Carolina and argued that First Tennessee Bank’s current investments are not innovative.

The commenter also alleged that Capital Bank has an inconsistent record of lending to LMI borrowers and in LMI areas and that Capital Bank has a poor record of lending to

³⁷ 12 U.S.C. § 2801 *et seq.*

³⁸ The commenter noted that in January 2016, First Tennessee Bank entered into a settlement agreement with a community organization that had submitted a fair housing complaint to the U.S. Department of Housing and Urban Development (“HUD”) regarding allegations that the bank had low levels of lending to and high levels of denials of African American and Hispanic borrowers in certain geographic areas. First Horizon represents that the complainant submitted substantially similar allegations to the Federal Reserve and OCC in connection with First Horizon’s applications to acquire TrustAtlantic Financial Corporation (“TrustAtlantic”) and First Tennessee Bank’s application to merge with Trust Atlantic Bank, and that First Tennessee Bank voluntarily settled the matter, while denying any violation of law, to avoid a lengthy and duplicative investigation by HUD. The Board approved the TrustAtlantic acquisition on September 17, 2015, and the OCC approved the related Bank Merger Act application on September 16, 2015. See First Horizon National Corporation, FRB Order No. 201524 (September 17, 2015); First Tennessee Bank, National Association, OCC CRA Decision No. 169 (September 16, 2015). In First Tennessee’s CRA performance evaluation dated February 23, 2014, the OCC considered this settlement and evidence of other relevant violations of law, and the CRA rating was not lowered as a result of the evidence of discriminatory or other illegal credit practices. The OCC also reviewed information pertaining to this matter and other matters noted in the bank’s CRA performance evaluation in connection with its review of First Tennessee Bank’s application to merge with Capital Bank, and did not identify any concerns regarding such matters that would impact the proposed transaction. See OCC Letter dated October 16, 2017.

³⁹ The commenter also made suggestions regarding specific products and services that First Tennessee Bank should offer and recommended other changes to First Tennessee Bank’s current product and service offerings. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them. See, e.g., *PacWest Bancorp*, 102 *Federal Reserve Bulletin* 82, 88 n. 24(2015).

⁴⁰ The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See, e.g., *United Bancshares, Inc.*, FRB Order No. 2017-10 at 12 n. 28 (April 6, 2017); *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *FifthThird Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas (“AAs”).

African American and Hispanic borrowers.⁴¹ The commenter was particularly critical of Capital Bank's lending performance in North Carolina. The commenter further alleged that Capital Bank's current community development investments are not innovative or creative.

Businesses of the Involved Institutions and Response to the Adverse Comment

First Horizon provides a diversified range of financial services, primarily through its principal subsidiary, First Tennessee Bank, which operates through a branch network in Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Services provided by First Horizon include general banking services for consumers, businesses, financial institutions, and governments; fixed income sales and trading; underwriting of bank-eligible securities; loan sales; investment and financial advisory services; credit card products; equipment finance services; and retail insurance sales.

CBFC is the holding company of Capital Bank, which is a full-service bank offering a range of consumer and commercial products and services. Capital Bank offers a variety of commercial loan products; residential mortgage loans; investment, trust, and cash management products and services to small and medium-size businesses and individuals; and a range of deposit products. It offers such products and services through branches in Florida, North Carolina, South Carolina, Tennessee, and Virginia.

In response to the commenter's allegations, First Horizon asserts that First Tennessee Bank's CRA performance and its record and efforts since its last CRA evaluation merit approval of the application. First Horizon represents that First Tennessee Bank has been and remains highly committed to meeting the needs of all customers, including LMI and minority individuals. In this regard, First Horizon notes that First Tennessee Bank offers a variety of loan and deposit products and other services designed to meet the needs of its community, and its products and services are equally available across its footprint. First Horizon asserts that First Tennessee Bank has launched certain products that are targeted toward LMI and minority individuals, including an affordable lending product that expands eligibility for financing homes in low-income communities. First Horizon asserts that First Tennessee Bank has hired five full-time community development managers in its major markets, who are tasked with building relationships and establishing partnerships with non-profits, affordable housing providers, and community development organizations. According to First Horizon, the community development managers will also work with community groups to promote new credit product opportunities for LMI and minority borrowers.

First Horizon further represents that First Tennessee Bank's commitment to the communities it serves has been enhanced in recent years with the development of a comprehensive multi-year CRA plan. First Horizon notes that this plan was required by and presented to the OCC, and that the OCC had no objection to implementation of the plan as written.⁴² First Horizon represents that this plan reflects measurable CRA lending, investment, and

⁴¹ The commenter focused on Capital Bank's lending performance to LMI individuals and areas in the Raleigh and Asheville, North Carolina, markets and the bank's lending performance to African American and Hispanic borrowers in North Carolina and Florida, based on HMDA data reported for 2016.

⁴² In connection with its approval of First Tennessee Bank's application to merge with TrustAtlantic Bank in 2015, the OCC required First Tennessee Bank to develop a CRA Plan to address certain CRA performance weaknesses that the OCC identified at the time. *See* Letter from Stephen A. Lybarger, Deputy Comptroller for District Licensing, OCC, to Jackie Prester, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC (September 16, 2015); *First Horizon National Corporation*, FRB Order No. 2015-24, 23-24 (September 27, 2015). As discussed in more detail below, the Board has consulted with the OCC regarding its views of First Tennessee Bank's CRA performance since its last CRA evaluation.

service commitments for First Tennessee Bank across its CRA AAs. First Horizon denies the commenter's allegation that First Tennessee Bank is not in a position to meet its goals under this CRA plan and asserts that First Tennessee Bank has already met or exceeded the majority of its commitments under its CRA plan and that its remaining commitments are on track for completion by the end of 2017.

In response to the commenter's concerns regarding Capital Bank's CRA and fair lending record, First Horizon notes that Capital Bank received an overall CRA rating of "Satisfactory" in its most recent CRA evaluation and that Capital Bank's rating on the Lending Test was "High Satisfactory." First Horizon represents that Capital Bank establishes CRA lending, investment, and services benchmarks, as well as minority lending benchmarks, and that Capital Bank actively monitors its progress in attaining these benchmarks and reports these findings to senior management and its board of directors on a regular basis. First Horizon represents that Capital Bank launched a multifaceted outreach effort this year in order to attract minority applicants. This effort included targeted product mailings to prospective applicants and ongoing contact with applicable businesses and nonprofit organizations. Further, First Horizon asserts that Capital Bank has made efforts to recruit and retain a diverse team of mortgage loan originators with an established record of serving the credit needs of LMI and minority individuals throughout the bank's footprint.

First Horizon denies the commenter's allegations that Capital Bank has fair lending shortcomings. First Horizon represents that Capital Bank performs fair lending risk assessments annually and that Capital Bank's residential mortgage lending activity is thoroughly analyzed and reviewed using statistical and regression analysis, supplemented by additional data quality reviews. First Horizon acknowledges that a violation of Regulation B⁴³ was identified by the FDIC in Capital Bank's 2016 CRA evaluation. However, First Horizon notes that examiners stated that the violation was limited to a single loan product that has since been discontinued and that Capital Bank immediately implemented changes to policies, procedures, training programs, internal assessments, and other practices to prevent future discriminatory or other illegal credit practices.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.⁴⁴ In this case, the Board considered the supervisory views of the OCC, FDIC, and CFPB.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.⁴⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

⁴³ 12 CFR 1002.

⁴⁴ See *Interagency Questions and Answers Regarding Community Reinvestment*, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

⁴⁵ 12 U.S.C. § 2906.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;⁴⁶ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.⁴⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of First Tennessee Bank

First Tennessee Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of April 7, 2014 ("First Tennessee Bank Evaluation").⁴⁸ First Tennessee Bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test. For the state of North Carolina, an area of particular concern to the commenter, First Tennessee Bank had a CRA rating of "Satisfactory."

Examiners found that First Tennessee Bank originated a significant majority of its loans inside its AAs and that the bank's lending activity was adequate. Examiners found that

⁴⁶ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

⁴⁷ Other information relevant to credit decisions could include credit history, debt-to-income ratio, and loan-to-value ratio. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

⁴⁸ The First Tennessee Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed HDMA and small business loans originated from January 1, 2010, through December 31, 2013. The evaluation period for community development loans, investments, and services was from January 11, 2010, through April 7, 2014. As of the evaluation date, the bank's AAs included parts of Georgia, Mississippi, North Carolina, and Tennessee. Examiners conducted full-scope reviews in at least one AA in each state where the bank had a financial center. Examiners also conducted full-scope reviews in two Multistate Metropolitan Statistical Areas ("MMSAs") where the bank operated branches in at least two states within the MMSA: the Memphis, Tennessee-Mississippi-Arkansas, MMSA and the Chattanooga, Tennessee-Georgia, MMSA.

First Tennessee Bank's geographic distribution of loans was adequate, noting that its excellent geographic distribution of small loans to businesses was offset by poor geographic distribution of home mortgage loans. Overall, examiners found that the distribution of loans by income level of the borrower was poor, as the bank's distribution of home mortgage loans by income level of the borrower was found to be adequate, but distribution of loans to businesses with different revenue sizes was found to be very poor. Examiners explained that the bank's community development lending had a significantly positive impact on the Lending Test in all rating areas and the bank's community development loans supported affordable housing initiatives, activities that promoted economic development within the bank's AAs, activities that revitalized or stabilized LMI census tracts, and operational activities of organizations that provide services to LMI individuals and families. Examiners found that First Tennessee Bank's level of community development lending elevated its otherwise adequate lending performance to good.

In North Carolina, examiners noted that First Tennessee Bank's home mortgage and small business lending activity was adequate and that its community development loan performance and community development lending levels were good. The bank's overall geographic distribution and borrower income distribution were found to be very poor.⁴⁹ Examiners noted, however, that the bank had a very limited presence in North Carolina, with only two full-service branches, one of which was limited to wealth management and commercial banking. Examiners also explained that the banking industry in the state was very competitive and noted that there was a low level of owner-occupied units and a high level of rental units in the Winston-Salem MSA AA, the AA given the most weight in the evaluation of First Tennessee Bank's performance in North Carolina.

Examiners found that First Tennessee Bank had a good level of qualified community development investments that were highly responsive to identified community development needs. Examiners noted that the community needs supported by First Tennessee Bank's investments included affordable housing, economic development, and services targeting LMI individuals. In North Carolina, First Tennessee Bank was rated "High Satisfactory" for the Investment Test, and examiners found that First Tennessee Bank had a good level of community development investments that reflected a high level of responsiveness to identified community development needs. Examiners noted that the bank's investments helped various nonprofit organizations in North Carolina fund their community development programs and continue to provide services targeted to LMI individuals and families.

Examiners found that First Tennessee Bank's branches were accessible to geographies and individuals of different income levels and that First Tennessee Bank provided an excellent level of community development services that were highly responsive to identified community development needs in the bank's AAs. Community development services noted by examiners in various AAs included services to organizations with a focus on serving LMI individuals, promoting economic development, and revitalizing and stabilizing AAs. In North Carolina, examiners found that First Tennessee Bank's overall level of community development service performance was excellent, but that First Tennessee Bank had a branch distribution that was accessible to limited portions of its AA.

Examiners noted that they considered evidence of discriminatory or other illegal credit practices in rating First Tennessee Bank's CRA performance and that the bank's CRA performance rating was not lowered as a result of their findings. In making this determination, examiners considered the nature, extent, and strength of the evidence of the prac-

⁴⁹ Examiners noted that they analyzed First Tennessee Bank's home mortgage and small business lending activity to identify any gaps in geographic distribution of loans and did not identify any unexplained conspicuous gaps.

tices; the extent to which the institution had policies and procedures in place to prevent the practices; the extent to which the institution had taken or had committed to take corrective action, including voluntary corrective action resulting from self-assessment; and other relevant information.⁵⁰

First Tennessee Bank's Activities since the First Tennessee Bank Evaluation

First Horizon asserts that, since the First Tennessee Bank Evaluation, First Tennessee Bank has been very active with lending, investment, and service activities that promote community development and the goals and objectives of the CRA. First Horizon represents that First Tennessee Bank has been working to increase its home mortgage lending to LMI tracts and individuals, as well as small businesses in LMI tracts. The bank's efforts include the development of an affordable mortgage product designed to serve the needs of LMI homebuyers; utilization of the LenderLive mortgage platform, which allows access to Fannie Mae and Freddie Mac affordable mortgage options; and continuing support to organizations that are funding small businesses.

In addition, First Horizon represents that First Tennessee Bank has made various community development loans that are responsive to community development and credit needs. According to First Horizon, such loans have supported affordable housing for LMI individuals; community services targeted to LMI individuals; economic development through the financing of small businesses that resulted in permanent job creation and/or retention; revitalization of LMI census tracts or other qualified geographies; and neighborhood stabilization projects to stimulate growth, stability, and investment in distressed areas. Further, First Horizon represents that First Tennessee Bank has continued to support its communities through a highly active volunteer program and has made a number of qualified grants targeted to community needs, including through a community development fund that it established to support agencies serving LMI communities and individuals. First Horizon also represents that First Tennessee Bank has established a partnership with a national nonprofit organization, the mission of which is to strengthen the economy by empowering individuals earning less than \$50,000 a year. First Horizon represents that, through this partnership, First Tennessee Bank has assisted thousands of individuals with financial education and counseling, including through the placement of certified financial counselors in the bank's branches to provide credit counseling, budgeting, and other financial empowerment training to individuals.

CRA Performance of Capital Bank

Capital Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of February 22, 2016 ("Capital Bank Evaluation").⁵¹ The bank received "High Satisfactory" ratings for the Lending Test and the Investment Test and a "Low Satisfactory" rating for the Service Test.

Examiners found that Capital Bank's lending levels reflected adequate responsiveness to credit needs within its AAs and that a high percentage of its loans were made within its

⁵⁰ As discussed above, in making this determination, OCC examiners considered the facts underlying the 2016 settlement agreement between First Tennessee Bank and a complainant to HUD that was of concern to the adverse commenter.

⁵¹ The Capital Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported pursuant to HMDA and the CRA from January 1, 2011, through October 31, 2015. The evaluation period for community development investments and services was from July 16, 2010, through February 22, 2016. The Capital Bank Evaluation included a review of lending in all of the bank's AAs. Special weight was given to AAs in which the bank conducted the most lending and deposit activities, which were located primarily in North Carolina and Florida.

AAs. Examiners further found that the geographic distribution of Capital Bank's loans reflected good penetration throughout its AAs. Examiners noted that Capital Bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the institution exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that Capital Bank used flexible lending practices in order to serve the credit needs of its AAs and that the bank made a relatively high level of community development loans.

In North Carolina, examiners found that Capital Bank's lending levels reflected good responsiveness to the credit needs of the bank's AAs. Examiners noted that the geographic distribution of Capital Bank's lending reflected good penetration, and the borrower distribution reflected adequate penetration, throughout its North Carolina AAs. For the Raleigh Metropolitan Statistical Area AA,⁵² examiners noted that the bank's level of lending reflected adequate responsiveness to the AA's credit needs, and the geographic distribution of its lending reflected adequate penetration, but that the borrower distribution reflected poor penetration. Examiners noted that the bank used flexible lending practices and made a relatively high level of community development loans in this AA. For the Asheville Metropolitan Statistical Area AA,⁵³ examiners found that Capital Bank's level of lending reflected adequate responsiveness to the credit needs of the AA. Examiners found that the bank's geographic distribution of lending in the AA reflected good penetration, but that the borrower distribution reflected poor penetration. Examiners noted that the bank used flexible lending practices and made a relatively high level of community development loans in the AA.

Examiners found that Capital Bank made a significant level of qualified community development investments and grants, occasionally in a leadership position, particularly those that were not routinely provided by private investors. Examiners further noted that the bank exhibited good responsiveness to credit and community economic development needs, but that the institution rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that, to the extent changes had been made, the institution's record of opening and closing branches generally had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services within its AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. First Horizon represents that the combined organization, with its greater size, capabilities, and breadth of products, would be able to offer a number of services that are not currently available to customers of First Tennessee Bank and Capital Bank as separate entities. In addition, First Horizon asserts that current Capital Bank customers would gain access to a broader suite of products and services,

⁵² The Raleigh Metropolitan Statistical Area AA consists of Johnston and Wake counties in North Carolina.

⁵³ The Asheville Metropolitan Statistical Area AA consists of Buncombe and Madison counties in North Carolina.

including a “lifeline” checking account for consumers who otherwise would not be able to qualify for a checking account, prepaid cards, financial planning and investment management services, wealth advisory services, a full-service trust department, and more dynamic digital and mobile banking products. Moreover, First Horizon represents that customers of both banks would benefit from an expanded branch and ATM network. First Horizon also represents that, following consummation of the proposed transaction, First Tennessee Bank would increase its support for LMI individuals and geographies across Capital Bank’s footprint by increasing its contributions to First Tennessee Bank’s community development fund. First Horizon also would expand its partnership with a national nonprofit organization that provides financial counseling in First Tennessee Bank branches.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the OCC regarding First Tennessee Bank’s CRA, consumer compliance, and fair lending records. The OCC reviewed the bank merger underlying this proposal, including the comments received by the Board. The Board has also considered the results of the most recent consumer compliance examination of First Tennessee Bank conducted by OCC examiners.

The Board also consulted with the FDIC, the primary supervisor of Capital Bank, regarding Capital Bank’s CRA, consumer compliance, and fair lending records. The Board considered the results of a recent consumer compliance examination of Capital Bank conducted by the FDIC, which included a review of the bank’s compliance management system, particularly with respect to areas exhibiting the potential risk for consumer harm. Examiners also conducted transaction testing and conducted a fair lending review.

The Board also consulted with the CFPB regarding First Tennessee Bank’s consumer compliance record.

The Board has taken the consultations with the OCC, FDIC, and CFPB, and the information discussed above, into account in evaluating the proposed transaction, including in considering whether First Horizon has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm’s AAs.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions’ records of compliance with fair lending and other consumer protection laws, supervisory views of the OCC, FDIC and CFPB, confidential supervisory information, information provided by First Horizon, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board to consider “the extent to which a

proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system.”⁵⁴

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁵⁵ These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁵⁶

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁵⁷

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is greater than \$10 billion in assets but a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.⁵⁸ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

⁵⁴ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

⁵⁵ Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

⁵⁶ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁵⁷ See *People’s United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

⁵⁸ As discussed *supra*, in the text on pages 19-20, First Horizon and CBFC offer a broad range of retail, and First Horizon offers a broad range of commercial, banking products and services. First Horizon has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Horizon with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting under delegated authority.

By order of the Board of Governors, effective October 30, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

Appendix

First Horizon/CBFC Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Johnson City-Bristol, Tennessee-Virginia (“Johnson City-Bristol”) – includes Carter, Hawkins, Sullivan, Unicoi, and Washington counties in Tennessee; and the independent city of Bristol, Scott County, and the Tyler and Wilson County subdivisions in Washington County, all in Virginia.						
First Horizon Pre-Consummation	1	\$1.11B	18.67			
CBFC	10	\$224.0M	3.77			
First Horizon Post-Consummation	1	\$1.33B	22.44	1028	141	30
Knoxville, Tennessee (“Knoxville”) – includes Anderson, Blount, Knox, Loudon, Morgan, Roane, and Union counties; Grainger County excluding District 5 in eastern Grainger County; Jefferson County excluding Districts 3, 8, and 9 in northern and eastern Jefferson County; and Districts 6 and 9 in western Sevier County.						
First Horizon Pre-Consummation	2	\$2.72B	17.51			
CBFC	16	\$182.6M	1.18			
First Horizon Post-Consummation	2	\$2.90B	18.69	1073	41	43
Nashville, Tennessee (“Nashville”) – includes Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, and Wilson counties.						
First Horizon Pre-Consummation	5	\$3.27B	6.67			
CBFC	14	\$547.2M	1.12			
First Horizon Post-Consummation	5	\$3.82B	7.79	943	15	63
Raleigh, North Carolina (“Raleigh”) – includes Franklin, Granville, Johnston, Wake, and Harnett counties excluding the Anderson Creek Barbeque, Johnsonville, and Stewarts Creek townships in Harnett County.						
First Horizon Pre-Consummation	14	\$399.3M	1.38			
CBFC	8	\$1.10B	3.82			
First Horizon Post-Consummation	7	\$1.50B	5.2	1281	11	32
Sevierville, Tennessee (“Sevierville”) – includes Cocke County, District 8 in eastern Jefferson County, and Sevier County excluding Districts 6 and 9 in western Sevier County.						
First Horizon Pre-Consummation	8	\$108.9M	4.49			
CBFC	12	\$28.0M	1.16			
First Horizon Post-Consummation	6	\$136.9M	5.65	1440	10	11
Winston-Salem, North Carolina (“Winston-Salem”) – includes Davie, Forsyth, Stokes, and Yadkin counties.						
First Horizon Pre-Consummation	12	\$102.2M	0.3			
CBFC	6	\$419.8M	1.23			
First Horizon Post-Consummation	6	\$521.9M	1.52	6772	1	17
Charlotte, North Carolina-South Carolina (“Charlotte”) – includes Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, and Union counties in North Carolina; the city of Mooresville and the townships of Davidson and Coddle Creek in Iredell County, North Carolina; the townships of Atwell and China Grove in Rowan County, North Carolina; the King’s Mountain township in Cleveland County, North Carolina; and Lancaster and York Counties in South Carolina.						
First Horizon Pre-Consummation	41	< \$0.1M	0			
CBFC	12	\$561.8M	0.28			
First Horizon Post-Consummation	12	\$561.8M	0.28	5894	0	41
Charleston, South Carolina (“Charleston”) – includes Berkeley, Charleston, and Dorchester counties, plus the southeastern portion of Colleton County, located east of the South Edisto River on Edisto Island.						
First Horizon Pre-Consummation	28	\$11.1M	0.09			
CBFC	21	\$40.8M	0.33			
First Horizon Post-Consummation	21	\$51.9M	0.42	1222	0	32

Data and rankings are as of June 30, 2016. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Southside Bancshares, Inc.
Tyler, Texas

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017-30 (October 30, 2017)

Southside Bancshares, Inc. (“Southside”), Tyler, Texas, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Diboll State Bancshares, Inc. (“Diboll”), and thereby indirectly acquire First Bank & Trust East Texas (“First Bank”), both of Diboll, Texas. Following the proposed acquisition, First Bank would be merged into Southside’s subsidiary bank, Southside Bank, Tyler, Texas.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 33496 (July 20, 2017)).⁴ The time for submitting comments has expired.

Southside, with consolidated assets of approximately \$5.6 billion, is the 192nd largest insured depository organization in the United States.⁵ Southside controls approximately \$3.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Southside controls Southside Bank, which operates only in Texas. Southside is the 21st largest insured depository organization in Texas, controlling deposits of approximately \$3.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷

Diboll, with assets of approximately \$993.8 million, is the 729th largest insured depository organization in the United States, controlling approximately \$888 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Diboll controls First Bank, which operates only in Texas. Diboll is the 76th largest insured depository organization in Texas, controlling deposits of approximately \$867.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Southside would become the 175th largest insured depository organization in the United States, with consolidated assets of approximately \$6.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Southside would control consolidated deposits of approximately \$4.5 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. Southside would become the 20th largest insured depository organization in Texas, controlling deposits of \$4.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of First Bank into Southside Bank is subject to approval of the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on August 25, 2017.

⁴ 12 CFR 262.3(b).

⁵ National asset data, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

⁶ In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.

⁷ State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁸ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.⁹

Southside and Diboll have subsidiary depository institutions that compete directly in the Tyler, Texas, banking market (“Tyler market”);¹⁰ the Palestine, Texas, banking market (“Palestine Market”);¹¹ and the Longview, Texas, banking market (“Longview Market”).¹² The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in the markets; the relative share of total deposits in insured depository institutions in the markets (“market deposits”) that Southside would control;¹³ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁴ and other characteristics of the market.

Banking Markets Within Established Guidelines. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Palestine and Longview banking markets.¹⁵ On consummation of the proposal, the Longview market would remain unconcentrated, and the Palestine market would remain moderately concentrated. In each of these banking markets, numerous competitors would remain.

Banking Market Warranting Special Scrutiny. The competitive effects of the proposal in the Tyler market warrants a detailed review because the proposal would result in the

⁸ 12 U.S.C. § 1842(c)(1)(A).

⁹ 12 U.S.C. § 1842(c)(1)(B).

¹⁰ The Tyler market includes Smith County; the southern portion of Wood County, including the cities of Alba, Mineola, and Hawkins; the eastern portion of Van Zandt County, including the cities of Van and Ben Wheeler; the eastern portion of Henderson County, including the cities of Brownsboro and Larue; and the northwest portion of Cherokee County, including the city of Mount Selman, all in Texas.

¹¹ The Palestine market includes Anderson County, including the cities of Elkhart, Frankston, and Palestine, all in Texas.

¹² The Longview market includes Gregg, Harrison, Marion, and Upshur counties and the northern two thirds of Rusk County, including the cities of Henderson and New London, all in Texas.

¹³ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989) and National City Corporation, 70 Federal Reserve Bulletin 743 (1984).* Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

¹⁴ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.*

¹⁵ These two banking markets and the competitive effects of the proposal in these markets are described in Appendix A.

market deposit share of Southside exceeding 35 percent when using initial competitive screening data. Southside is the largest depository organization in the Tyler market, controlling deposits of approximately \$2.36 billion, which represent approximately 35.98 percent of market deposits. Diboll is the 22nd largest depository organization in the market, controlling deposits of approximately \$24.5 million, which represent approximately 0.37 percent of market deposits. On consummation of the proposal, the combined entity would be the largest depository organization in the Tyler market, controlling deposits of approximately \$2.38 billion, which would represent approximately 36.35 percent of market deposits. The HHI in the market would increase by 27 points, from 1,602 to 1,629.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Tyler market.¹⁶ Factors indicate that the increase in concentration in the Tyler market, as measured by market share, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of six community credit unions in the Tyler market. The institutions offer a wide range of consumer banking products, operate street level branches, and have broad membership criteria that includes almost all of the residents in the relevant banking market.¹⁷ The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in estimating market influence. This weighting takes into account the limited commercial and industrial lending done by these credit unions relative to commercial banks' lending levels.

In this case, adjustments to reflect competition from credit unions reduce the measured concentration level in the Tyler market. Specifically, after consummation, the market share of Southside in the Tyler market resulting from the transaction would decrease from 36.35, the unadjusted percentage, to 35.23 percent, the adjusted amount. The HHI would increase by 25 from 1,507 to 1,532.

The Board has also examined other aspects of the structure of the Tyler market that mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Tyler market. After consummation of the proposal, Southside would face competition from 28 other depository institutions in the market, one of which would control more than 10 percent of market deposits and two of which would each control more than 5 percent of market deposits. The presence of these viable competitors suggests that Southside would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Southside in the Tyler market. This conclusion is supported in this case by an analysis of private pricing data, which indicates that Southside's fees and interest rates for deposit products in the Tyler market are close to the median prices of other banks in the market and do not deviate substantially from Southside's prices in markets where Southside is not the dominant firm. Moreover, although Southside would continue to hold

¹⁶ The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. See *Nationsbank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

¹⁷ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

a dominate market share position, the change in market share would be *de minimis* and the market would remain moderately concentrated.

Conclusion Regarding Competitive Effects

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Longview, Palestine, and Tyler markets. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, particularly the structure of the relevant markets and the number of remaining competitors, as well as the other factors discussed above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Longview, Palestine, or Tyler markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁸ In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Southside and Diboll are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with a subsequent merger of Southside Bank and First Bank.¹⁹ The asset quality, earnings, and liquidity of both Southside and Diboll are consistent with approval, and Southside appears to have adequate resources to absorb the related costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records

¹⁸ 12 U.S.C. §§ 1842(c)(2), (5), and (6).

¹⁹ To effect the holding company merger, a wholly owned subsidiary of Southside formed to facilitate the transaction would merge with Diboll, with Diboll as the surviving entity, and immediately thereafter Diboll would merge with Southside, with Southside as the surviving entity. Upon consummation of the merger of Diboll with Southside, each share of Diboll common stock would be exchanged for a portion of the aggregate merger consideration, which would consist of Southside common stock and cash. First Bank would then merge with and into Southside Bank, with Southside Bank as the surviving entity. Southside has the financial resources to effect the transaction.

of Southside, Diboll, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Southside; the Board's supervisory experiences and those of the FDIC with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Southside, Diboll, and their subsidiary depository institutions are considered to be well managed. Southside's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and Southside's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Southside's plans for implementing the proposal. Southside has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Southside would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Southside's management has the experience and resources to operate the combined organization in a safe and sound manner, and Southside plans to integrate First Bank's existing senior management in a manner that augments Southside Bank's management.²⁰

Based on all the facts of record, including the supervisory records of Southside, Diboll, and their subsidiary banks, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Southside and Diboll in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²¹ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").²² The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²³ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁴

In addition, the Board considers the banks' overall compliance records and their recent fair lending examinations. Fair lending laws require all lending institutions to provide appli-

²⁰ On consummation, two members currently on the board of directors of Diboll will be appointed to the board of Southside.

²¹ 12 U.S.C. § 1842(c)(2).

²² 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

²³ 12 U.S.C. § 2901(b).

²⁴ 12 U.S.C. § 2903.

cants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Southside Bank and First Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, and information provided by Southside.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁵ In this case, the Board considered the supervisory views of the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁶ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act,²⁷ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-

²⁵ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁶ 12 U.S.C. § 2906.

²⁷ 12 U.S.C. § 2801 *et seq.*

income individuals;²⁸ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they provide community development services, and their responsiveness to community development lending, investment, and service needs.²⁹

CRA Performance of Southside Bank

Southside Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the FDIC, as of October 19, 2015 ("Southside Bank Evaluation").³⁰ The bank received "Outstanding" ratings for each of the Investment Test and the Service Test and a "High Satisfactory" rating for the Lending Test. Southside Bank's performance in the Tyler MSA AA was weighted most heavily by examiners due to the level of the bank's activity in that area.

Examiners concluded that Southside Bank's performance demonstrated an excellent responsiveness to credit needs in its assessment areas. In particular, examiners found that Southside Bank exhibited excellent performance regarding the level of its lending activity, including home mortgage and small business lending. Examiners noted that a high percentage of the bank's loans were originated inside its AAs, including the bank's small business and home mortgage loans. Examiners further noted that, based on 2013 peer data on lending activity, Southside Bank ranked first among 54 CRA-reporting institutions in the Tyler MSA AA.

Examiners also found that the bank exhibited an overall good record of lending to borrowers of different income and revenue levels. In reaching this conclusion, examiners considered the bank's good record of lending to small businesses of different revenue levels to offset the bank's adequate record of lending to home mortgage borrowers of different income levels. Examiners also concluded that the geographic distribution of the bank's lending was good. Examiners noted that Southside Bank made use of innovative and flexible lending practices in order to serve the needs of its AAs, including LMI borrowers and small businesses. Examiners observed that Southside Bank participates in several affordable housing programs that provide loans with relaxed qualifications or provide grant money for down payment and closing cost assistance.

Examiners also considered the bank to be a leader in community development lending. Examiners found that Southside Bank's management made extraordinary efforts to iden-

²⁸ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less; small business and small farm loans by loan amounts at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

²⁹ See 12 CFR 228.26(c).

³⁰ The Southside Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans, and small business and small farm loans, for the period between July 29, 2013, and October 19, 2015. The evaluation period for community development lending, investments, and services was July 29, 2013, through October 19, 2015. The Southside Bank Evaluation included a full-scope evaluation of the Tyler Metropolitan Statistical Area ("MSA") AA. Limited-scope evaluations were performed for the Longview MSA AA; Dallas-Plano-Irving Metropolitan District ("MD") AA; Fort Worth-Arlington MD AA; and the Austin-Round Rock-San Marcos MSA AA. Data from non-metropolitan areas in Texas were aggregated to form one non-metropolitan AA, and examiners conducted a limited-scope evaluation of this AA.

tify and locate community development lending opportunities, as evidenced by the variety and geographic range of the bank's community development loans.

Examiners also concluded that Southside Bank's responsiveness to credit and community development needs was excellent. In reaching this conclusion, examiners noted that all of the bank's investments and donations benefitted the bank's AAs or the state of Texas. Examiners also determined that the level of the bank's qualified investments and donations was excellent. They noted that a majority of the bank's investments were made in school districts in Texas, including 62 school districts where the majority of students are economically disadvantaged.

In addition, examiners found that Southside Bank provided delivery systems that were readily accessible to its customers. The bank's delivery channels included online and mobile banking, automatic teller machines, and branches. Examiners concluded that the bank tailored its retail banking locations and services to meet the needs of LMI individuals. In particular, examiners found that changes to Southside Bank's branch network over the evaluation period had improved accessibility for LMI individuals and noted that the bank had tailored its hours and service locations to meet the needs of LMI individuals.

CRA Performance of First Bank

First Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 31, 2016 ("First Bank Evaluation").³¹ First Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test. Although First Bank's overall rating took into consideration its performance in each of its MSA AAs, examiners gave significantly more weight to the bank's records in the bank's non-MSA AAs due to the higher volume of loans in those areas.

For the Lending Test, examiners focused their evaluation on First Bank's small business and home mortgage loans. Examiners found that First Bank's loan-to-deposit ratio was reasonable given its size, business strategy, and financial condition relative to the needs of the bank's AAs. Examiners found that First Bank originated a majority of its lending within its AAs. Specifically, examiners noted that First Bank originated a majority of its small business and mortgage loans inside of its AAs measured both by number and dollar volume. Examiners also found that First Bank's distribution of small business loans among borrowers of different incomes and revenues was reasonable. Similarly, examiners determined that First Bank demonstrated a reasonable record of geographically distributing its small business loans throughout its AAs. Examiners also considered the bank's geographic distribution of home mortgage loans to be reasonable.

With respect to community development, examiners considered First Bank's community development loans, community development investments, and community development

³¹ The First Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed small business, small farm, home mortgage, and consumer loans originated by the bank from August 19, 2013, through May 31, 2016. Because commercial loans and home mortgage loans together comprised approximately 60.5 percent of the bank's loan portfolio, examiners focused the Lending Test on such loans. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from August 19, 2013, through May 31, 2016. Examiners included qualified investments from the previous examination period if the investments were still outstanding.

The First Bank Evaluation included full-scope reviews of First Bank's performance in its non-MSA AAs in Anderson County, Texas, and in Nacogdoches, San Augustine, Sabine, Angelina, and Jasper counties, all in Texas. Examiners conducted limited-scope reviews of performance in the Houston-Woodlands-Sugar Land, Texas MSA AA, the Longview, Texas MSA AA, and the Tyler, Texas MSA AA.

services. Examiners found that First Bank's record of community development lending was excellent. In addition, examiners considered First Bank's responsiveness to community development needs to be excellent given the bank's capacity and the availability of opportunities in the bank's AAs. Examiners found that First Bank exhibited an adequate record of providing community development investments and donations and an excellent record of providing community development loans. Examiners noted that the bank directed a substantial majority of community development activities towards efforts to revitalize and stabilize geographies within its AAs. In addition, examiners concluded that the bank demonstrated an adequate record of providing community development services. This conclusion was based on excellent performance regarding the availability of services, but adequate performance regarding the types of services.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Southside Bank's CRA, consumer compliance, and fair lending records. The Board has considered the results of the most recent consumer compliance examination of Southside Bank conducted by the FDIC, which included a review of Southside Bank's policies and procedures for complying with fair lending and other consumer compliance laws.

The Board has taken the results of the FDIC's examinations and its consultations with the FDIC into account in evaluating this proposal, including in considering whether Southside Bank has the experience and resources to ensure that policies and programs are implemented in a manner that would allow the combined organization to effectively serve the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Southside represents that upon consummation of the proposal, existing customers of First Bank would have access to a more expansive line of products and services. Southside also represents that the acquisition would reduce expenses for both institutions and thus make available expanded resources to the communities currently served by Southside Bank and First Bank. Southside represents that, following the proposed transaction, it will continue to provide a level of service consistent with Southside Bank's current CRA performance.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the FDIC, confidential supervisory information, information provided by Southside, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a

proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”³²

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³³ These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁴

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁵

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.³⁶ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

³² Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

³³ Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³⁵ See *Peoples United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁶ Southside primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, wealth management services, and treasury management. Diboll primarily offers commercial and consumer banking services, commercial real estate lending, and trust services. In each of the activities in which it engages, Southside has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by Southside with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Dallas, acting under delegated authority.

By order of the Board of Governors, effective October 30, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

South State Corporation Columbia, South Carolina

Order Approving the Merger of Bank Holding Companies FRB Order No. 2017-31 (November 14, 2017)

South State Corporation (“SSC”), Columbia, South Carolina, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Park Sterling Corporation (“PSC”) and thereby indirectly acquire PSC’s subsidiary bank, Park Sterling Bank, both of Charlotte, North Carolina. Following the proposed acquisition, Park Sterling Bank would be merged into SSC’s subsidiary bank, South State Bank, Columbia, South Carolina.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 32812 (July 18, 2017)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

SSC, with consolidated assets of approximately \$11.2 billion, is the 119th largest insured depository organization in the United States. SSC controls approximately \$9.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ SSC controls South State Bank, which operates in Georgia, North Carolina, and South Carolina. SSC is the 5th largest insured depository organization in South Carolina, controlling approximately \$5.6 billion in deposits, which represent approximately 7.1 percent of the total deposits of insured depository institutions in that state.⁶ SSC is the 38th largest insured depository organization in North Carolina, controlling approximately \$399.1 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state. SSC is the 14th largest insured depository organization in Georgia, controlling approximately \$2.8 billion in deposits, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

PSC, with consolidated assets of approximately \$3.3 billion, is the 273rd largest insured depository organization in the United States. PSC controls approximately \$2.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. PSC controls Park Sterling Bank, which operates in Georgia, North Carolina, South Carolina, and Virginia. PSC is the 15th largest insured depository organization in South Carolina, controlling approximately \$731.7 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state. PSC is the 18th largest insured depository organization in North Carolina, controlling approximately \$965.9 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state. PSC is the 65th largest insured depository organization in Georgia, controlling

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Park Sterling Bank into South State Bank is subject to approval of the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. *See* 12 U.S.C. § 1828(c). The FDIC approved the bank merger on October 31, 2017.

⁴ 12 CFR 262.3(b).

⁵ National asset and deposit data are as of June 30, 2017, unless otherwise noted.

⁶ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

approximately \$240.8 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, SSC would become the 102nd largest insured depository organization in the United States, with consolidated assets of approximately \$14.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. SSC would control total deposits of approximately \$11.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In South Carolina, SSC would remain the 5th largest insured depository organization, controlling deposits of approximately \$6.3 billion, which represent approximately 8 percent of the total deposits of insured depository institutions in that state. In North Carolina, SSC would become the 15th largest insured depository organization, controlling deposits of approximately \$1.4 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Georgia, SSC would become the 13th largest insured depository organization, controlling deposits of approximately \$3.0 billion, which represent approximately 1.3 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.⁷ Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.⁸ In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.⁹

For purposes of the BHC Act, the home state of SSC is South Carolina, and Park Sterling Bank is located in Georgia, North Carolina, South Carolina, and Virginia.¹⁰ SSC is well capitalized and well managed under applicable law, and South State Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹¹ There are no minimum age requirements under the laws of Georgia, North Carolina, or Virginia that would apply to SSC’s acquisition of Park Sterling Bank, and Park Sterling Bank has been in existence for more than five years.¹²

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

¹⁰ *See* 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

¹¹ 12 U.S.C. § 2901 *et seq.*

¹² *See* N.C. Gen. Stat. Ann. § 53-211; Ga. Code Ann. § 7-1-622; Va. Code Ann. § 6.2-849 *et seq.*

On consummation of the proposed transaction, SSC would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, SSC would control less than 30 percent of the total deposits of insured depository institutions in Georgia, North Carolina, and South Carolina, the only states in which SSC and PSC have overlapping banking operations.¹³ The Board has considered all other requirements under section 3(d) of the BHC Act, including South State Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁴ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹⁵

SSC and PSC have subsidiary depository institutions that compete directly in the Charleston, Columbia, Greenville, Greenwood, and Newberry County banking markets, all of which are located in South Carolina.¹⁶ The depository institution subsidiaries of SSC and PSC also compete directly in the Charlotte, North Carolina-South Carolina, banking market (“Charlotte market”),¹⁷ the Spartanburg, South Carolina-North Carolina, banking market (“Spartanburg market”),¹⁸ and the Wilmington, North Carolina, banking market (“Wilmington market”).¹⁹

The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each

¹³ Both Georgia and South Carolina impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control. *See* Ga. Code Ann. § 7-1-622(b)(2)(B); S.C. Code Ann. § 34-25-240(b). North Carolina does not impose limits on the total amount of in-state deposits that a single banking organization may control.

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ 12 U.S.C. § 1842(c)(1)(B).

¹⁶ The Charleston, South Carolina, banking market (“Charleston market”) is defined as Berkeley, Charleston, and Dorchester counties, and the southeastern part of Colleton County (east of the South Edisto River on Edisto Island), all of South Carolina. The Columbia, South Carolina, banking market (“Columbia market”) is defined as Calhoun, Fairfield, Kershaw, Lexington, and Richland counties, all of South Carolina. The Greenville, South Carolina, banking market (“Greenville market”) is defined as Anderson, Greenville, Laurens, and Pickens counties, all of South Carolina. The Greenwood, South Carolina, banking market (“Greenwood market”) is defined as Abbeville, Greenwood, and McCormick counties, all of South Carolina. The Newberry County, South Carolina, banking market (“Newberry County market”) is defined as Newberry County, South Carolina.

¹⁷ The Charlotte market is defined as Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, and Union counties, all of North Carolina; the city of Mooresville and the townships of Davidson and Coddle Creek, all in Iredell County, North Carolina; the townships of Atwell and China Grove, all in Rowan County, North Carolina; the King’s Mountain township in Cleveland County, North Carolina; and Lancaster and York counties, both of South Carolina.

¹⁸ The Spartanburg market is defined as Cherokee, Spartanburg, and Union counties, all of South Carolina, and Polk County, North Carolina.

¹⁹ The Wilmington market is defined as New Hanover, Pender, and Brunswick (excluding the Shallotte Township) counties, all of North Carolina.

market (“market deposits”) that SSC would control;²⁰ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²¹ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for each of these markets. On consummation of the proposed transaction, the Charlotte and Columbia markets would remain highly concentrated, but the increase in the HHI in each market would be minimal (1 point or less), and numerous competitors would remain.²² The Newberry County market also would remain highly concentrated on consummation of the proposal, but the increase in the HHI would be below the threshold in the DOJ Bank Merger Guidelines.²³ Further, six competitors would remain in the market, including a market leader with 29.35 percent market share and three other competitors that would each have an over 10 percent market share.

On consummation of the proposal, the Charleston, Greenwood, Spartanburg, and Wilmington markets would remain moderately concentrated, as measured by the HHI, and the Greenville market would remain unconcentrated. Numerous competitors would remain in each market.²⁴

²⁰ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984).* Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

²¹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²² SSC operates the 10th largest depository institution in the Charlotte market, controlling approximately \$567.9 million in deposits, which represent approximately 0.3 percent of market deposits. PSC operates the 7th largest depository institution in the same market, controlling approximately \$819.1 million in deposits, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, SSC would become the 7th largest depository organization in the market, controlling deposits of approximately \$1.4 billion, which represent approximately 0.7 percent of market deposits. The HHI for the Charlotte market would increase by less than 1 point to 5894, and 42 competitors would remain in the market.

SSC operates the 8th largest depository institution in the Columbia market, controlling approximately \$466.3 million in deposits, which represent approximately 2.6 percent of market deposits. PSC operates the 17th largest depository institution in the same market, controlling approximately \$50.1 million in deposits, which represent approximately 0.3 percent of market deposits. On consummation of the proposed transaction, SSC would become the 7th largest depository organization in the market, controlling deposits of approximately \$516.4 million, which represent approximately 2.8 percent of market deposits. The HHI for the Columbia market would increase by 1 point to 2028, and 25 competitors would remain in the market.

²³ SSC operates the 6th largest depository institution in the Newberry County market, controlling approximately \$30.3 million in deposits, which represent approximately 6.3 percent of market deposits. PSC operates the 3rd largest depository institution in the same market, controlling approximately \$75.6 million in deposits, which represent approximately 15.7 percent of market deposits. On consummation of the proposed transaction, SSC would become the 2nd largest depository organization in the market, controlling deposits of approximately \$105.9 million, which represent approximately 22.0 percent of market deposits. The HHI for the Newberry County market would increase by 197 points to 2015, and 6 competitors would remain in the market.

²⁴ SSC operates the 3rd largest depository institution in the Charleston market, controlling approximately \$1.5 billion in deposits, which represent approximately 12.6 percent of market deposits. PSC operates the 27th largest depository institution in the same market, controlling approximately \$12.6 million in deposits, which represent approximately 0.1 percent of market deposits. On consummation of the proposed transaction,

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Charleston, Columbia, Greenville, Greenwood, Newberry County, Charlotte, Spartanburg, or Wilmington banking markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁵ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the

SSC would remain the 3rd largest depository organization in the market, controlling deposits of approximately \$1.5 billion, which represent approximately 12.7 percent of market deposits. The HHI for the Charleston market would increase by 2 points to 1224, and 33 competitors would remain in the market.

SSC operates the 6th largest depository institution in the Greenwood market, controlling approximately \$86.9 million in deposits, which represent approximately 7.5 percent of market deposits. PSC operates the 3rd largest depository institution in the same market, controlling approximately \$180.2 million in deposits, which represent approximately 15.5 percent of market deposits. On consummation of the proposed transaction, SSC would become the largest depository organization in the market, controlling deposits of approximately \$267.2 million, which represent approximately 23.0 percent of market deposits. The HHI for the Greenwood market would increase by 232 points to 1728, and 10 competitors would remain in the market.

SSC operates the 20th largest depository institution in the Spartanburg market, controlling approximately \$33.5 million in deposits, which represent approximately 0.6 percent of market deposits. PSC operates the 16th largest depository institution in the same market, controlling approximately \$109.0 million in deposits, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, SSC would become the 15th largest depository organization in the market, controlling deposits of approximately \$142.4 million, which represent approximately 2.4 percent of market deposits. The HHI for the Spartanburg market would increase by 2 points to 1002, and 22 competitors would remain in the market.

SSC operates the 11th largest depository institution in the Wilmington market, controlling approximately \$159.3 million in deposits, which represent approximately 2.3 percent of market deposits. PSC operates the 13th largest depository institution in the same market, controlling approximately \$69.5 million in deposits, which represent approximately 1.0 percent of market deposits. On consummation of the proposed transaction, SSC would become the 9th largest depository organization in the market, controlling deposits of approximately \$228.7 million, which represent approximately 3.3 percent of market deposits. The HHI for the Wilmington market would increase by 5 points to 1280, and 21 competitors would remain in the market.

SSC operates the 7th largest depository institution in the Greenville market, controlling approximately \$773.4 million in deposits, which represent approximately 5.1 percent of market deposits. PSC operates the 14th largest depository institution in the same market, controlling approximately \$217.9 million in deposits, which represent approximately 1.4 percent of market deposits. On consummation of the proposed transaction, SSC would become the 5th largest depository organization in the market, controlling deposits of approximately \$991.2 million, which represent approximately 6.5 percent of market deposits. The HHI for the Greenville market would increase by 14 points to 921, and 35 competitors would remain in the market.

²⁵ 12 U.S.C. § 1842(c)(2), (5), and (6).

operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

SSC and PSC are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured primarily as a share exchange, with a subsequent merger of the subsidiary depository institutions.²⁶ The asset quality, earnings, and liquidity of both South State Bank and Park Sterling Bank are consistent with approval, and SSC appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of SSC, PSC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by SSC; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenter.

SSC, PSC, and their subsidiary depository institutions are each considered to be well managed. SSC has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of SSC have knowledge of and experience in the banking and financial services sectors, and SSC's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered SSC's plans for implementing the proposal. SSC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. SSC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, SSC's management has the experience and resources to operate the combined organization in a safe and sound manner, and SSC plans to integrate PSC's existing management and personnel in a manner that augments SSC's management.²⁷

Based on all of the facts of record, including SSC's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of SSC and PSC in combating money-laundering activities, are consistent with approval.

²⁶ As part of the proposed transaction, each share of PSC common stock would be converted into a right to receive shares of SSC common stock based on an exchange ratio. Certain stock options granted by PSC would be cancelled and converted into the right to receive a cash amount based on an exchange ratio. SSC has the financial resources to effect the proposed transaction.

²⁷ SSC anticipates that, on consummation of the proposed transaction, PSC's chief executive officer and an independent member of PSC's board of directors would be appointed to the boards of directors of SSC and South State Bank.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁸ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.³⁰

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of South State Bank and Park Sterling Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by SSC; and the public comment received on the proposal.

Public Comment on the Proposal

A commenter objected to the proposal on the basis of alleged disparities in South State Bank's lending to African Americans and Hispanics, as compared to whites, in the Columbia, South Carolina Metropolitan Statistical Area ("Columbia MSA"), the Charlotte, North Carolina MSA ("Charlotte MSA"), and the Atlanta, Georgia MSA ("Atlanta MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")³¹ for 2015. Specifically, the commenter alleged that South State Bank originated low levels of home mortgage loans to African American and Hispanic borrowers and had high denial rates for home purchase loan applications from such borrowers, compared to white borrowers, in each MSA. In addition, the commenter asserted that South State Bank should provide additional information concerning the branches that it plans to close in connection with the proposed transaction, as well as its criteria for closing branches.

Businesses of the Involved Institutions and Response to the Public Comment

SSC operates primarily through South State Bank, offering a broad range of financial products and services to consumers and businesses. Through its network of branches

²⁸ 12 U.S.C. § 1842(c)(2).

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

³¹ 12 U.S.C. § 2801 *et seq.*

across Georgia, North Carolina, and South Carolina, the bank offers a variety of banking products and services, including consumer and commercial loans, real estate mortgages, personal checking and savings accounts, business checking and savings accounts, and private banking and asset management services.

PSC operates primarily through Park Sterling Bank and offers a wide variety of banking products and services to its customers in branches across Georgia, North Carolina, South Carolina, and Virginia. These products and services include retail and commercial banking services; commercial, consumer, and mortgage loans; and trust and investment services.

SSC disputes the commenter's allegations that South State Bank has engaged in discriminatory lending practices and represents that it is firmly committed to making its credit products and services available to customers on a fair and equitable basis and in strict compliance with fair lending laws and regulations. SSC asserts that the denial rates referenced by the commenter reflect determinations based on nondiscriminatory factors, including debt-to-income ratios, credit and employment history, and collateral. SSC represents that it maintains a fair lending program with policies and procedures that help ensure compliance with CRA and fair lending requirements. These include a second review program for denied consumer loans, periodic testing and monitoring of South State Bank's HMDA data, and periodic analyses of the bank's consumer lending products to detect possible disparate treatment with respect to credit decisions and pricing. In addition, SSC represents that it conducts extensive fair lending compliance training for its employees and provides periodic reporting of fair lending compliance risk assessments, issues, and trends to senior management and directors.

SSC acknowledges that South State Bank plans to close or consolidate certain branches of the combined organization following consummation of the proposed transaction, but disputes the commenter's allegations that it has not publicized which branches it intends to close. SSC asserts that South State Bank has been transparent to the public by disclosing the locations of the branches that it plans to close or consolidate and providing explanations for its decisions. SSC represents that South State Bank considered a variety of factors in identifying branches for closure, including the proximity of other branch locations, the financial performance and future prospects of the relevant branches, and the impact of branch closures on customers and the community. SSC represents that customers would receive prior notice before any branches are closed or consolidated. Moreover, SSC represents that any branch closures would be completed in accordance with regulatory requirements associated with closing branches.³²

SSC represents that South State Bank offers a variety of mortgage loan products and programs designed to increase affordable housing opportunities for LMI individuals and communities. Specifically, SSC represents that South State Bank has proprietary loan programs for underserved markets and participates in a variety of national, state, and local mortgage lending programs designed to assist LMI individuals and LMI or minority communities. SSC contends that South State Bank offers, among its proprietary programs, an affordable home mortgage loan product available to borrowers purchasing homes in high minority census tracts and borrowers meeting certain income thresholds, which allows loan-to-value ratios of up to 100 percent. SSC asserts that South State Bank has taken steps to increase its home mortgage lending to African American, Hispanic, and LMI

³² The Board notes that section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Fed. Reg.* 34844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

borrowers, including partnering with local organizations that promote affordable housing, home ownership, and economic development opportunities. SSC represents that South State Bank has hired community mortgage loan originators in various markets who have a specific focus on community outreach and mortgage originations in markets where South State Bank's minority applications intake rate falls below certain benchmarks. In addition, SSC represents that South State Bank has been increasing its outreach efforts to further promote its mortgage lending products and services and recently announced a new \$100 million mortgage lending initiative to assist LMI and minority communities.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.³³ In this case, the Board considered the supervisory views of the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁴ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁵ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of

³³ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

³⁴ 12 U.S.C. § 2906.

³⁵ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.³⁶ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of South State Bank

South State Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 31, 2016 ("South State Bank Evaluation").³⁷ The bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.

Examiners found that South State Bank's overall lending levels reflected good responsiveness to the credit needs of its AAs. According to examiners, the bank originated a substantial majority of its loans within its AAs, and the distribution of its loans reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Regarding the bank's distribution of borrowers, examiners found that the bank's home mortgage lending performance to LMI borrowers was generally consistent with or below aggregate and demographic data, and the bank's lending performance to small businesses was generally below aggregate and demographic data. However, examiners found that South State Bank's geographic distribution of loans reflected good penetration throughout its AAs and noted that its home mortgage and small business lending performance in LMI census tracts was generally consistent with or above aggregate and demographic data. Moreover, examiners noted that the bank used flexible lending practices in order to serve the credit needs of its AAs and participated in or used several programs to help borrowers who otherwise might not qualify for credit. The bank's innovative or flexible lending practices noted by examiners included an affordable housing residential mortgage loan program that the bank designed to meet the needs of LMI families and affordable home mortgage loans that featured down-payment assistance.

In the Columbia MSA and Charlotte MMSA, both areas of concern to the commenter, the bank's lending levels were found to reflect generally adequate responsiveness to the AAs' credit needs, and, in the Atlanta-Sandy Springs-Roswell MSA ("Atlanta MSA"), another area of concern to the commenter, examiners found that the bank's lending performance reflected good responsiveness to the credit needs of the AA. According to examiners, the

³⁶ Other information relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³⁷ The South State Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small loans made to businesses and farms reported under CRA data collection requirements from January 1, 2014, through the second quarter of 2016. The evaluation period for community development loans, investments, and services was July 2, 2014, through October 31, 2016. As of the evaluation date, the bank had 16 AAs located in three states and two multistate MSAs. The South State Bank Evaluation included full-scope evaluations of the bank's AAs in the following locations: Charleston-North Charleston, Greenville-Anderson-Mauldin, Columbia ("Columbia MSA"), and Hilton Head Beach-Bluffton-Beaufort MSAs, all of South Carolina, as well as the South Carolina non-MSA; Savannah, Georgia, MSA and Georgia non-MSA; Wilmington, North Carolina, MSA; and the Multistate MSAs ("MMSAs") of Charlotte-Concord-Gastonia, North Carolina-South Carolina ("Charlotte MMSA") and Myrtle Beach-Conway-North Myrtle Beach, North Carolina-South Carolina. Limited scope evaluations were performed for the bank's other AAs.

geographic distribution of the bank's HMDA lending was found to be adequate in the Columbia MSA and the Atlanta MSA and generally adequate in the Charlotte MMSA. The bank's distribution of borrowers for HMDA lending was found to reflect adequate penetration among retail customers of different income levels in both the Columbia MSA and Charlotte MMSA. In the Atlanta MSA, examiners found that the bank's distribution of borrowers for HMDA lending reflected good penetration among retail customers of different income levels, and the bank's level of home purchase lending to low-income borrowers was significantly above aggregate and demographic data. In the Columbia and Atlanta MSAs, examiners found that the bank made an adequate level of community development loans; however, examiners determined that the bank's level of community development lending was low in the Charlotte MMSA. In each of these three geographic areas, examiners found that the bank used flexible lending practices.

Examiners found that South State Bank maintained a significant level of qualified investments. In light of the available investment opportunities, examiners found that the level and innovation of the bank's qualified investments demonstrated good responsiveness to the credit and community development needs of its AAs. Examiners noted that the bank occasionally used innovative and complex investments to support community development initiatives and that the majority of its investments by number and dollar volume benefited affordable housing, followed by economic development and stabilization. Examiners found that the bank demonstrated adequate responsiveness to meeting the community development investment needs of the Columbia MSA and Charlotte MMSA and good responsiveness to meeting the community development investment needs of the Atlanta MSA.

Examiners found South State Bank's delivery systems to be reasonably accessible to essentially all portions of its AAs. Examiners found that the bank's opening and closing of branches generally did not adversely affect the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners determined that the bank's services and business hours did not vary in a way that inconvenienced parts of its AAs. Examiners found that, overall, the bank provided a relatively high level of community development services in its AAs, including to organizations that promoted affordable housing, economic and small business development, financial education, and other community development goals. Examiners found that the bank provided a relatively high level of community development services in the Columbia MSA and Charlotte MMSA and that the bank was a leader in providing community development services in the Atlanta MSA.

South State Bank's Activities Since the South State Bank Evaluation

SSC represents that, since the South State Bank Evaluation, South State Bank has furthered its commitment to community reinvestment and to serving the needs of LMI geographies and individuals in all of its communities. According to SSC, the bank has done so through a range of initiatives, including community development service activities, community development loans and investments, and lending to small businesses and LMI borrowers. SSC represents that South State Bank has demonstrated its commitment to flexible and innovative lending by participating in several loan programs that provide financing to LMI borrowers or small businesses in LMI geographies. SSC also represents that South State Bank made a variety of community development loans and investments to promote job creation and improve services in LMI geographies. SSC contends that the bank has provided financial literacy training for youth, young adults, adults, and small business owners and has supported organizations that provide targeted services to LMI individuals and communities.

CRA Performance of Park Sterling Bank

Park Sterling Bank received an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of April 24, 2017 (“Park Sterling Bank Evaluation”),³⁸ with a “High Satisfactory” rating for the Lending Test and “Low Satisfactory” ratings for the Investment Test and Service Test.

Examiners concluded that Park Sterling Bank’s overall lending levels reflected good responsiveness to the credit needs of the bank’s AAs. Examiners found that a high percentage of the bank’s loans, by number and dollar amount, was originated in its AAs. Examiners found that the geographic distribution of the bank’s loans reflected good penetration throughout the bank’s AAs. The distribution of the bank’s borrowers was found to reflect poor penetration among retail customers of different income levels and adequate penetration among businesses of different sizes. Examiners found the bank to be a leader in making community development loans. Examiners noted that the bank extended a substantial number and dollar amount of community development loans, with most of the loans directly targeted at affordable housing for LMI families.

Examiners found that Park Sterling Bank maintained an adequate level of qualified investments, particularly those that were not routinely provided by private investors. Examiners found that the volume and percentage of the bank’s investments were commensurate with those provided by similarly situated banks. The majority of the bank’s investments by number and dollar amount was found to have benefited affordable housing, followed by economic development and revitalization or stabilization.

Examiners found that the bank’s delivery systems were reasonably accessible to essentially all portions of the bank’s AAs. To the extent that changes had been made, examiners determined that the bank’s opening and closing of branches throughout the AAs had improved the accessibility of the bank’s delivery systems, especially in LMI geographies or to LMI individuals. Examiners also found that Park Sterling Bank’s banking hours and services did not vary in a way that inconvenienced portions of the bank’s AAs, particularly LMI geographies or individuals. Examiners found that the bank provided an adequate level of community development services within its AAs, and such services supported a variety of community organizations that promoted affordable housing, economic development, financial education, and small business development.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the FDIC regarding South State Bank’s CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger underlying this proposal and, in so doing, considered the comment received by the Board. In addition, the Board consulted with the Consumer Financial Protection Bureau (“CFPB”).

The Board has considered the results of the most recent consumer compliance examination of South State Bank conducted by the FDIC, which included a review of the bank’s

³⁸ The Park Sterling Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small loans made to businesses and farms reported under CRA data collection requirements from January 1, 2015, through December 31, 2016. The evaluation period for community development lending, investments, and services was April 12, 2014, through April 24, 2017. The Park Sterling Bank Evaluation included full-scope evaluations of the bank’s AAs in the following locations: Charlotte-Concord-Gastonia, North Carolina-South Carolina Multistate MSA; Greenville-Anderson-Mauldin, South Carolina MSA; South Carolina non-MSA; Wilmington, North Carolina MSA; Georgia non-MSA; and Richmond, Virginia MSA. Limited-scope evaluations were performed in the bank’s other AAs.

compliance management system and the bank's compliance with consumer protection laws, including fair lending laws and regulations. Examiners also conducted transaction testing and a fair lending review.

The Board has taken the consultations with the FDIC and the CFPB and the information discussed above into account in evaluating the proposed transaction, including in considering whether SSC has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. SSC represents that, as a result of the proposal, existing customers of South State Bank and Park Sterling Bank would benefit from an expanded branch and ATM network and a broader range of financial products and services. Moreover, SSC represents that the proposed transaction would create potential expense-saving opportunities, which would create opportunities to pass savings on to customers of the combined organization.

SSC contends that the combined organization would have a greater focus on consumer lending, as additional Park Sterling Bank employees would be trained as consumer lenders, and the organization would be able to offer higher unsecured loan amounts. SSC asserts that current small business and commercial customers of Park Sterling Bank would gain access to a broader retail network, focused on delivering small business loans, as well as to enhanced small business lending through South State Bank's participation and experience in Small Business Administration lending and other state and federal loan assistance programs.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the FDIC, confidential supervisory information, information provided by SSC, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system."³⁹

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and

³⁹ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴⁰ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴¹

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴²

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.⁴³ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁴⁴ In reaching its conclusion, the Board has consid-

⁴⁰ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

⁴¹ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴² See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

⁴³ SSC and PSC offer a range of retail and commercial banking products and services. SSC has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis.

⁴⁴ The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit

ered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by SSC with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Richmond, acting under delegated authority.

By order of the Board of Governors, effective November 15, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

National Bank Holdings Corporation Greenwood Village, Colorado

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-34 (November 28, 2017)

National Bank Holdings Corporation (“NBH”), Greenwood Village, Colorado, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Peoples, Inc. (“Peoples”), Lawrence, Kansas, and thereby indirectly acquire Peoples Bank, Lawrence, Kansas, and Peoples National Bank (“PNB”), Colorado Springs, Colorado.

In addition, NBH’s subsidiary state member bank, NBH Bank (together with NBH, “Applicants”), Greenwood Village, Colorado, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Peoples Bank and PNB, with NBH Bank as the surviving entity.³ NBH Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main offices and branches of Peoples Bank and PNB.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 37589 (August 11, 2017)).⁵ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

NBH, with consolidated assets of approximately \$4.7 billion, is the 212th largest insured depository organization in the United States. NBH controls approximately \$3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ NBH controls NBH Bank, which operates in Colorado, Kansas, Missouri, and Texas. NBH is the 25th largest insured depository organization in Kansas, controlling deposits of approximately \$574.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷ NBH is the 15th largest insured depository organization in Colorado, controlling deposits of approximately \$1.5 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

Peoples, with consolidated assets of approximately \$924.3 million, is the 796th largest insured depository organization in the United States.⁸ Peoples controls approximately

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. In addition, NBH Bank has applied under section 9 of the FRA to establish branches at certain locations of Peoples Bank that currently only provide limited services. The locations of all of the branches to be established are listed in the Appendix.

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

⁷ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

⁸ The Winter Trust of 12/3/74 (“Winter Trust”), Lawrence, Kansas, is a registered bank holding company that controls Peoples. After consummation of the proposed transaction, the Winter Trust is expected to deregister as a bank holding company.

\$724.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Peoples controls Peoples Bank, which operates in Kansas and New Mexico, and PNB, which operates in Colorado. Peoples is the 69th largest insured depository organization in Kansas, controlling deposits of approximately \$220.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Peoples is the 42nd largest insured depository organization in Colorado, controlling deposits of approximately \$265.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, NBH would become the 192nd largest insured depository organization in the United States, with consolidated assets of approximately \$5.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. NBH would control consolidated deposits of approximately \$4.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Kansas, NBH would become the 14th largest insured depository organization, controlling deposits of approximately \$794.5 million, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state. In Colorado, NBH would become the 14th largest insured depository organization, controlling deposits of approximately \$1.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁹ Section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.¹⁰ The Board may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.¹¹ In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping operations.¹²

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1831u(a)(1).

¹¹ 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

¹² 12 U.S.C. § 1842(d)(2)(A) & (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

For purposes of the BHC Act, the home state of NBH is Missouri, Peoples Bank is located in Kansas and New Mexico, and PNB is located in Colorado.¹³ For purposes of section 44 of the FDI Act, the home state of NBH Bank is Colorado, and the home states of Peoples Bank and PNB are Kansas and Colorado, respectively.¹⁴ NBH and NBH Bank are well capitalized and well managed under applicable law, and NBH Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹⁵ Kansas has a five-year minimum age requirement and there are no minimum age requirements under the laws of Colorado or New Mexico that would apply to the proposal.¹⁶ Peoples Bank and PNB have each been in existence for more than 5 years.

On consummation of the proposed transaction, NBH would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Each of Kansas, Colorado, and New Mexico imposes a limit on the total amount of in-state deposits that a single banking organization may control. Specifically, Kansas imposes a 15 percent deposit limit, Colorado imposes a 25 percent deposit limit, and New Mexico imposes a 40 percent deposit limit.¹⁷ The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Kansas, approximately 1.4 percent of the total amount of deposits of insured depository institutions in Colorado, and less than 1 percent of the total amount of deposits of insured depository institutions in New Mexico. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including NBH Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under both statutes.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁸ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁹

NBH and Peoples have subsidiary depository institutions that compete directly in the Colorado Springs, Colorado, banking market (“Colorado Springs market”) and the Kansas City, Missouri, banking market (“Kansas City market”).²⁰ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the

¹³ See 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank’s home state is the state in which the bank is chartered.

¹⁴ For purposes of section 44 of the FDI Act, a state bank’s home state is the state in which the bank is chartered, and a national bank’s home state is the state in which the main office of the bank is located. 12 U.S.C. § 1831u(g)(4).

¹⁵ 12 U.S.C. § 2901 *et seq.*

¹⁶ See Kan. Stat. Ann. § 9-541.

¹⁷ See Kan. Stat. Ann. § 9-520; Colo. Rev. Stat. § 11-104-202(4); N.M. Stat. Ann. § 58-1C-5(B).

¹⁸ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

¹⁹ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

²⁰ The Colorado Springs market includes the Colorado Springs, Colorado, Ranally Metropolitan Area (“RMA”), and the non-RMA portions of El Paso and Teller counties, both of Colorado. The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden, and Kingsville in Johnson County,

Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits of insured depository institutions in the markets (“market deposits”) that NBH would control;²¹ the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²² and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Colorado Springs and Kansas City markets. On consummation of the proposal, the Colorado Springs market would remain moderately concentrated and the Kansas City market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.²³

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Colorado Springs or Kansas City markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Missouri; the towns of Adrian, Amsterdam, and Butler in Bates County, Missouri; Franklin, Johnson, Leavenworth, Miami, and Wyandotte counties, all of Kansas; and Linn County, Kansas (excluding the towns of Blue Mound and Prescott).

²¹ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

²² Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²³ NBH operates the 36th largest depository institution in the Colorado Springs market, controlling approximately \$18.1 million in deposits, which represent approximately 0.2 percent of market deposits. Peoples operates the 8th largest depository institution in the same market, controlling deposits of approximately \$211.4 million, which represent approximately 2.8 percent of market deposits. On consummation of the proposed transaction, NBH would become the 8th largest depository organization in the market, controlling deposits of approximately \$229.4 million, which represent approximately 3 percent of market deposits. The HHI for the Colorado Springs market would increase by 2 points to 1068, and 38 competitors would remain in the market.

NBH operates the 6th largest depository institution in the Kansas City market, controlling approximately \$1.6 billion in deposits, which represent approximately 3.2 percent of market deposits. Peoples operates the 34th largest depository institution in the same market, controlling deposits of approximately \$174.5 million, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, NBH would remain the 6th largest depository organization in the market, controlling deposits of approximately \$1.7 billion, which represent approximately 3.5 percent of market deposits. The HHI for the Kansas City market would increase by 3 points to 847, and 115 competitors would remain in the market.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁴ In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

NBH and NBH Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with subsequent mergers of Peoples Bank and PNB with and into NBH Bank.²⁵ The asset quality, earnings, and liquidity of NBH Bank, Peoples Bank, and PNB are each consistent with approval, and NBH appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of NBH, Peoples, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by NBH, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

NBH and its subsidiary depository institution are each considered to be well managed. NBH has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. NBH's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and NBH's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered NBH's plans for implementing the proposal. NBH has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. NBH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, NBH's management has the experience and resources to operate the combined

²⁴ 12 U.S.C. §§ 1842(c)(2), (5) & (6), and 1828(c)(5) & (11).

²⁵ To effect the transaction, each share of Peoples common stock would be converted into a right to receive cash and NBH common stock, based on an exchange ratio. NBH has the financial resources to effect the proposed transaction.

organization in a safe and sound manner, and NBH plans to integrate the existing management and personnel of Peoples in a manner that augments NBH's management.²⁶

Based on all the facts of record, including NBH's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of NBH and Peoples in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁷ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.²⁸ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.³⁰

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of NBH Bank, Peoples Bank, and PNB; the compliance records of each bank; the supervisory views of the Federal Reserve Bank of Kansas City ("Reserve Bank"); confidential supervisory information; and information provided by NBH.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as infor-

²⁶ Following consummation of the proposed transaction, certain officers and employees of Peoples Bank and PNB will join NBH Bank.

²⁷ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁸ 12 U.S.C. § 2901 *et seq.*

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

mation and views provided by the appropriate federal supervisors.³¹ In this case, the Board considered the views of the Reserve Bank.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³² An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),³³ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁴ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of NBH Bank

NBH Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of December 5, 2016 ("NBH Bank Evaluation").³⁵ The bank received an "Outstanding" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.³⁶ Examiners found that NBH

³¹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* S48506, 48548 (July 25, 2016).

³² 12 U.S.C. § 2906.

³³ 12 U.S.C. § 2801 *et seq.*

³⁴ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

³⁵ The NBH Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, business, and farm loans, as well as community development activities (loans, investments, and services), from January 1, 2011, through December 31, 2015.

³⁶ The NBH Bank Evaluation included full-scope evaluations in the Kansas City, Combined Statistical Area; Denver, Colorado Metropolitan Statistical Area ("MSA"); Rural Colorado AA; Northwest Rural Missouri AA; and the Dallas, Texas Metropolitan Division. Limited scope evaluations were performed in the Colorado Springs, Colorado MSA; Fort Collins, Colorado MSA; Greeley, Colorado MSA; Pueblo, Colorado MSA; Grand Junction, Colorado MSA; North Central Rural Missouri AA; Northeast Rural Missouri AA; and Austin, Texas MSA.

Bank's overall lending activity reflected good responsiveness to the credit needs of its AAs. Examiners found that the bank originated a substantial majority of its HMDA, business, and farm loans within its AAs and that the geographic distribution of the bank's HMDA, business, and farm loans was good. In addition, examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses and farms of different sizes. Examiners noted that NBH Bank was a leader in making loans that revitalized and stabilized LMI geographies, as well as loans for economic development.

Examiners determined that NBH Bank demonstrated an adequate responsiveness to the community development needs of its AAs through investments and service activity. Examiners found that the bank's community development investments primarily consisted of mortgage-backed securities comprised of loans to LMI borrowers or secured by a residential mortgage within an LMI census tract. In addition, examiners found that the bank's products, services, and business hours did not vary in a way that inconvenienced customers in its AAs, particularly those in LMI geographies and individuals.

CRA Performance of Peoples Bank

Peoples Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 6, 2012 ("Peoples Bank Evaluation").³⁷ The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test.³⁸

Examiners found that Peoples Bank's average net loan-to-deposit ratio, which is a measure of the overall level of lending, was more than reasonable given the bank's size and financial condition and the credit needs of the bank's AAs. Examiners also found that a majority of the bank's home purchase, home improvement, and business loans were originated within the bank's AAs and that the geographic and borrower distribution of loans reflected reasonable penetration throughout the bank's AAs.

Examiners noted that Peoples Bank's community development performance, which included loans, donations, and services, demonstrated adequate responsiveness to community development needs throughout its AAs. The bank was found to have performed service activities for various organizations, particularly those providing community services targeted to LMI individuals or families.

CRA Performance of PNB

PNB was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 6, 2011 ("PNB Evaluation").³⁹ Examiners found that PNB's loan-to-deposit ratio was excellent, given area competition and the credit needs of the community. Examiners also found that the majority of the bank's loans by number and dollar amount were originated within its AA

³⁷ The Peoples Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. Examiners reviewed HMDA loans from 2010 and 2011 and business loans from a six-month period that ended June 12, 2012. Examiners also reviewed community development activities (loans, investments, and services), from June 21, 2010, through August 6, 2012.

³⁸ The Peoples Bank Evaluation included full-scope evaluations in the Kansas City, Missouri-Kansas MSA, and the Albuquerque, New Mexico MSA. Limited scope evaluations were performed in the Lawrence, Kansas MSA and Non-Metropolitan, Taos County, New Mexico Non-MSA.

³⁹ The PNB Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed commercial real estate loans from January 2006 through May 2011, and HMDA loans from January 1, 2010, through March 31, 2011. The PNB Evaluation included a full-scope review of the bank's AA, the El Paso County, Colorado MSA.

and its overall lending to borrowers of different incomes and to small businesses was reasonable. Examiners determined that the bank's lending to small businesses was excellent and noted that the bank's distribution of loans to small businesses exceeded the demographic comparator.

Examiners found that the geographic distribution of PNB's residential real estate loans reflected reasonable dispersion throughout the geographies for different income levels. Examiners also found that the geographic distribution of PNB's business loans within the bank's AA was excellent.

Additional Convenience and Needs Considerations

The Board has entered into a Consent Order with Peoples Bank with respect to deceptive practices in violation of section 5 of the Federal Trade Commission Act,⁴⁰ which were centered in Peoples Bank's national mortgage business line. This business line, which is separate and apart from the Bank's community banking operations, is being terminated and is not being assumed by NBH as part of this proposal. Pursuant to the Consent Order, Peoples Bank has agreed to pay restitution to affected customers and to set aside at least \$2.8 million for this purpose. Because NBH is not a party to the Consent Order, this order is conditioned on NBH's commitment to cause NBH Bank to comply with Peoples Bank's restitution and related Consent Order obligations.

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. NBH represents that it does not have any plans to discontinue any product or service currently offered by Peoples Bank or PNB. NBH represents that, following the proposed transaction, its customers would gain access to products and services not currently offered by NBH Bank, including wealth and investment services through a third-party broker-dealer relationship and health savings accounts and payroll services through another third-party relationship. In addition, NBH represents that the proposed transaction would provide expanded product capabilities to customers of Peoples Bank and PNB, including access to NBH Bank's credit card offerings, a merchant-funded debit card cash back program, and various online banking features, such as wire transfers, person-to-person payments, and personal financial management tools. In addition, NBH represents that customers of NBH and Peoples would benefit from a larger branch and ATM network.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with consumer protection laws, confidential supervisory information, information provided by NBH, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to

⁴⁰ 15 U.S.C. § 45.

consider a proposal’s “risk to the stability of the United States banking or financial system.”⁴¹

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴² These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴³

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁴

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.⁴⁵ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

⁴¹ Dodd-Frank Act §§ 604(d) & (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

⁴² Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

⁴³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁴ See *Peoples United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

⁴⁵ NBH offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Peoples also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, NBH has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

Establishment of Branches

NBH Bank has applied under section 9 of the FRA to establish branches at the current locations of Peoples Bank and PNB.⁴⁶ The Board has assessed the factors it is required to consider when reviewing an application under that section.⁴⁷ Specifically, the Board has considered NBH Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective November 28, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

⁴⁶ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2) & (c). In addition, under section 44 of the FDI Act, a bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, NBH Bank's branches would be permissible under applicable state law. See Kan. Stat. Ann. § 9-1111(b); Colo. Rev. Stat. §§ 11-105-602 and 603; N.M. Stat. Ann. § 58-5-2.

⁴⁷ 12 U.S.C. § 322; 12 CFR 208.6.

Appendix**Branches to Be Established by NBH Bank**

1. 745 New Hampshire Street, Lawrence, Kansas 66044
2. 4831 West 6th Street, Lawrence, Kansas 66049
3. 1506 South Main Street, Ottawa, Kansas 66067
4. 434 South Main Street, Ottawa, Kansas 66067
5. 7579 West 151st Street, Overland Park, Kansas 66223
6. 3045 Iowa Street, Lawrence, Kansas 66046
7. 212 South Broadway Street, Louisburg, Kansas 66053
8. 13180 Metcalf Avenue, Overland Park, Kansas 66213
9. 5 Supermarket Road, Questa, New Mexico 87556
10. 121 East Main Street, Red River, New Mexico 87558
11. 710 Paseo Del Pueblo Sur, Suite A, Taos, New Mexico 87571
12. 219 Paseo Del Pueblo Norte, Taos, New Mexico 87571
13. 2155 Louisiana Boulevard Northeast, Suite 1000, Albuquerque, New Mexico, 87110
14. 1356 Paseo Del Pueblo Sur, Taos, New Mexico 87571
15. 19 North Tejon, Suite 100, Colorado Springs, Colorado 80903
16. 5175 North Academy Boulevard, Colorado Springs, Colorado 80918
17. 13725 Struthers Road, Suite 200, Colorado Springs, Colorado 80921
18. 400 Harrison Avenue, Leadville, Colorado 80461
19. 1899 Woodmoor Drive, Monument, Colorado 80132
20. 651 Scott Avenue, Woodland Park, Colorado 80863

CenterState Bank Corporation Winter Haven, Florida

Order Approving the Acquisition of a Bank Holding Company FRB Order. No 2017-35 (December 6, 2017)

CenterState Bank Corporation (“CenterState”), Winter Haven, Florida, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire HCBF Holding Company, Inc. (“HCBF”), and thereby indirectly acquire Harbor Community Bank (“Harbor Bank”), both of Fort Pierce, Florida. Following the proposed acquisition, Harbor Bank would be merged into CenterState’s subsidiary bank, CenterState Bank, National Association (“CenterState Bank”), Winter Haven, Florida.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 45587 (September 29, 2017)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

CenterState, with consolidated assets of approximately \$6.8 billion, is the 171st largest insured depository organization in the United States.⁵ CenterState controls approximately \$5.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ CenterState controls CenterState Bank, which operates only in Florida. CenterState is the 21st largest insured depository organization in Florida, controlling deposits of approximately \$4.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷

HCBF, with consolidated assets of approximately \$2.2 billion, is the 415th largest depository organization in the United States. HCBF controls approximately \$1.8 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. HCBF controls Harbor Bank, which operates only in Florida.⁸ HCBF is the 44th largest insured depository organization in Florida, controlling deposits of approximately \$1.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, CenterState would become the 148th largest insured depository organization in the United States, with consolidated assets of approximately \$9.2 billion after adjustments, which represent less than 1 percent of the total assets of

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Harbor Bank into CenterState Bank, which is expected to occur immediately after CenterState’s acquisition of HCBF, is subject to the approval of the Office of the Comptroller of the Currency (“OCC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on November 29, 2017.

⁴ 12 CFR 262.3(b).

⁵ National asset and deposit data and market share are as of September 30, 2017, unless otherwise noted. National ranking data are as of June 30, 2017.

⁶ In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.

⁷ State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

⁸ The proposal does not raise interstate issues under section 3(d) of the BHC Act because Florida is the home state of both CenterState and Harbor Bank, and Harbor Bank operates only in Florida. *See* 12 U.S.C. § 1842(d).

insured depository organizations in the United States. CenterState would control consolidated deposits of approximately \$7.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Florida, CenterState would become the 17th largest depository organization, controlling deposits of approximately \$5.6 billion, which represent approximately 1.0 percent of the total deposits of insured depository institutions in that state.⁹

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁰ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹¹

CenterState and HCBF have subsidiary depository institutions that compete directly in 11 banking markets in Florida. The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in the markets, the relative shares of the total deposits in insured depository institutions in the markets (“market deposits”) that CenterState would control,¹² the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”),¹³ and other characteristics of the markets.

⁹ In addition to the proposed acquisition of HCBF, CenterState has proposed to acquire Sunshine Bancorp, Inc. (“Sunshine”), a savings and loan holding company, and Sunshine’s subsidiary federal savings association, Sunshine Bank, both of Plant City, Florida. The OCC approved CenterState Bank’s application for the merger of Sunshine Bank into CenterState Bank on October 26, 2017. The General Counsel of the Board has opined that no regulatory purpose would be served by requiring a filing under section 3 of the BHC Act for CenterState to acquire Sunshine. Letter to Beth S. DeSimone dated September 21, 2017; *see also* 12 CFR 225.12(d)(2). CenterState plans to complete the acquisition of Sunshine in the first calendar quarter of 2018.

Upon consummation of CenterState’s proposed acquisition of both Sunshine and HCBF, CenterState would become the 136th largest insured depository organization in the United States, with consolidated assets of approximately \$10.2 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. CenterState would control consolidated deposits of approximately \$7.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Florida, CenterState would become the 16th largest depository organization, controlling deposits of approximately \$6.3 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

¹⁰ 12 U.S.C. § 1842(c)(1)(A).

¹¹ 12 U.S.C. § 1842(c)(1)(B).

¹² Local deposit and market share data are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹³ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that the DOJ Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Fort Pierce, Gainesville, Indian River, Ocala, Okeechobee, Orlando, Saint Augustine, Sarasota, Tampa Bay, and West Palm Beach banking markets.¹⁴ On consummation, the Sarasota and West Palm Beach banking markets would remain unconcentrated, the Okeechobee banking market would remain highly concentrated, and the other seven banking markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in these banking markets.

Banking Market Warranting Special Scrutiny

The competitive effects that consummation of the proposal would have in the Palatka Area, Florida, banking market (“Palatka banking market”)¹⁵ warrant a detailed review because the proposal would result in concentration levels which exceed the thresholds in the DOJ Bank Merge Guidelines.¹⁶ Using the initial competitive screening data, CenterState is the fourth largest depository organization in the Palatka banking market, controlling deposits of approximately \$78.6 million, which represent approximately 14.2 percent of market deposits. HCBF is the sixth largest depository organization in the market, controlling deposits of approximately \$60.5 million, which represent approximately 10.9 percent of market deposits. On consummation of the proposal, the combined entity would be the largest depository organization in the Palatka market, controlling deposits of approximately \$139.1 million, which would represent approximately 25.2 percent of market deposits. The HHI in the market would increase by 311 points, from 1,820 to 2,131.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Palatka banking market.¹⁷ Factors indicate that the increase in concentration in the Palatka market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two credit unions in the Palatka banking market. These institutions offer a wide range of consumer banking products, operate street-level branches, and have broad membership criteria that include almost all of the residents in the relevant banking market.¹⁸ The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in estimating

¹⁴ The banking markets and the competitive effects of the proposal in these markets are described in the Appendix. Consummation of the proposal would be within the thresholds of the DOJ Bank Merger Guidelines in these markets even if CenterState’s proposed acquisition of Sunshine is taken into account.

¹⁵ The Palatka banking market is defined as Putnam County and the Hastings area of St. Johns County, both in Florida.

¹⁶ The analysis of this banking market would not change if CenterState’s proposed acquisition of Sunshine is taken into account, as Sunshine does not operate in the Palatka banking market.

¹⁷ The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in the banking market. See *Nationsbank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

¹⁸ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *Central Banccompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Passumpsic Bancorp.*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

After consummation, adjusting to reflect competition from these credit unions, the market concentration level in the Palatka banking market as measured by the HHI would increase by 236 points, from a level of 1,466 to 1,701, and the market share of CenterState resulting from the transaction would increase from 12.4 percent to 21.9 percent.

The Board also has examined other aspects of the structure of the Palatka banking market that mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Palatka market. After consummation of the proposal, CenterState would face competition from the two credit unions and five commercial banks. Excluding CenterState, four of these competitors would each control over 10 percent of market deposits, including one with a market share of over 20 percent. The presence of these viable competitors suggests that CenterState would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on CenterState in the Palatka banking market.

Conclusion Regarding Competitive Effects

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Palatka banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, in particular the structure of the relevant markets, the number of remaining competitors, and other factors discussed above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Palatka banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁹ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

¹⁹ 12 U.S.C. § 1842(c)(2), (5), and (6).

CenterState and CenterState Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is funded primarily through an exchange of shares, with a subsequent merger of the subsidiary depository institutions.²⁰ The asset quality, earnings, and liquidity of both CenterState Bank and Harbor Bank are consistent with approval, and CenterState appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of CenterState, HCBF, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CenterState; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

CenterState, HCBF, and their subsidiary depository institutions are considered to be well managed. CenterState's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and CenterState's risk-management program appears to be consistent with approval of this expansionary proposal.

The Board also has considered CenterState's plans for implementing the proposal. CenterState has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. CenterState would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, CenterState's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all the facts of record, including CenterState's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of CenterState and HCBF in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²¹ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the

²⁰ At the time of the merger, each share of HCBF common stock would be converted into a right to receive CenterState common stock and cash, based on an exchange ratio. CenterState would fund the cash portion of the exchange through available cash and borrowing from a third party. CenterState has the financial resources to fund the transaction.

²¹ 12 U.S.C. § 1842(c)(2).

Community Reinvestment Act of 1977 (“CRA”).²² The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions’ safe and sound operation,²³ and requires the appropriate federal financial supervisory agency to assess a depository institution’s record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²⁴

In addition, the Board considers the banks’ overall compliance records and their recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board also may consider the institution’s business model, its marketing and outreach plans, the organization’s plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of CenterState Bank and Harbor Bank, the compliance records of both banks, supervisory information from the OCC and the Federal Deposit Insurance Corporation (“FDIC”), and information provided by CenterState.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information provided by the appropriate federal supervisors.²⁵ In this case, the Board considered the supervisory views of the OCC and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁶ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution’s primary federal supervisor of the institution’s overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution, such as CenterState Bank, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution’s home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution’s data reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”),²⁷ in addition to small business, small farm, and

²² 12 U.S.C. §2901 *et seq.*

²³ 12 U.S.C. § 2901(b).

²⁴ 12 U.S.C. § 2903.

²⁵ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

²⁶ 12 U.S.C. § 2906.

²⁷ 12 U.S.C. § 2801 *et seq.*

community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;²⁸ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.²⁹ Large institutions are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their assessment areas and a service test that evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.³⁰ Intermediate small banks, such as Harbor Bank, are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments, the extent to which they provide community development services, and their responsiveness to community development lending, investment, and service needs.³¹

CRA Performance of CenterState Bank

CenterState Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of April 6, 2015 ("CenterState Bank Evaluation").³² The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.³³

Examiners found that CenterState Bank's overall lending activity in its AAs was good and noted that the majority of the bank's loans were originated in the bank's AAs. Examiners noted that the bank's home mortgage lending reflected adequate penetration among different geographies and borrower income levels. Additionally, examiners noted that the bank's small loans to businesses reflected an excellent penetration among different geographies and borrower income levels. Examiners also found that the bank's community development lending had a positive impact on the bank's overall lending performance.

²⁸ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

²⁹ *See* 12 CFR 228.22(b).

³⁰ *See* 12 CFR 228.21 *et seq.*

³¹ *See* 12 CFR 228.26(c).

³² The CenterState Bank Evaluation was conducted using the Large Bank CRA Examination Procedures. Examiners reviewed HMDA loans and small business loans reported by CenterState Bank for 2012, 2013, and 2014. Examiners reviewed community development activities from March 6, 2012, through April 6, 2015.

³³ The CenterState Bank Examination included full-scope evaluations of three AAs, the Lakeland-Winter Haven, Florida, Metropolitan Statistical Area ("MSA"); the Orlando-Kissimmee-Sanford, Florida, MSA; and the Tampa-St. Petersburg-Clearwater, Florida MSA. Limited-scope evaluations were performed in the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida, Metropolitan Division ("MD"); West Palm Beach-Boca Raton-Delray Beach, Florida, MD; Deltona-Daytona Beach-Ormond Beach, Florida, MSA; Homosassa Springs, Florida, MSA; Jacksonville, Florida, MSA; Ocala, Florida, MSA; Port St. Lucie, Florida, MSA; Sebastian-Vero Beach, Florida, MSA; The Villages, Florida, MSA; and in Hendry, Okeechobee, and Putnam counties, all in Florida.

Examiners found that the bank's performance under the Investment Test was adequate. Examiners noted that the bank had a significant level of qualified investments, but that its investments were statewide or regional in scope and were, therefore, less responsive to AA needs. Examiners found that the bank's performance under the Service Test was good. Examiners noted that the bank's retail delivery systems were accessible to the bank's geographies and to individuals of different income levels within its AAs. Examiners also noted that the bank provided an adequate level of community services.

CRA Performance of Harbor Bank

Harbor Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of August 8, 2016 ("Harbor Bank Evaluation").³⁴ The bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.³⁵

Examiners found that Harbor Bank's loan-to-deposit ratio was reasonable given the institution's size and financial condition and the credit needs of the bank's AAs. Examiners noted that a substantial majority of the bank's loans were originated within the bank's AAs and that the geographic distribution of the bank's loans reflected a reasonable dispersion throughout the bank's AAs. Examiners also noted that the distribution of borrowers reflected a reasonable penetration among individuals of different income levels and businesses of different sizes. Additionally, examiners noted that Harbor Bank had not received any CRA-related complaints since its previous evaluation.

Examiners found that Harbor Bank demonstrated an adequate responsiveness to the community development needs of its AAs. Examiners noted that the institution met those needs through community development loans, qualified investments, and community development services, as appropriate.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of CenterState Bank conducted by the OCC, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board also has considered the results of the most recent consumer compliance examination of Harbor Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of CenterState Bank and Harbor Bank, into account in evaluating the proposed transaction, including in considering whether CenterState has the experience and resources to ensure that it helps to meet the credit needs of the communities within its AAs.

³⁴ The Harbor Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the Lending Test and the Community Development Test. Examiners reviewed HMDA loans reported by the bank for 2014, 2015, and the first six months of 2016, as well as small business loans originated by the bank in 2015 and the first six months of 2016. Examiners reviewed community development activities from July 23, 2013, through August 8, 2016.

³⁵ The Harbor Bank Evaluation included full-scope evaluations of ten AAs, all located within Florida: the Port St. Lucie AA (composed of Martin and St. Lucie counties); the Orlando AA (composed of Lake, Orange, Osceola, and Seminole counties); the St. Johns AA (composed of St. Johns County); the North Port AA (composed of Manatee and Sarasota counties); the Gainesville AA (composed of Alachua and Gilchrist counties); the Highlands AA (composed of Highlands County); the Marion AA (composed of Marion County); the Indian River AA (composed of Indian River County); the Palm Beach AA (composed of portions of Palm Beach County); and an AA composed of Okeechobee and Putnam counties.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. CenterState represents that it has no plans to discontinue any significant product or service currently offered by CenterState Bank or Harbor Bank. CenterState also represents that, following the proposed transaction, customers of Harbor Bank would have access to a broader range of products and services than is currently available to them. CenterState asserts that, following the proposed transaction, CenterState Bank would continue to provide a level of service consistent with or exceeding CenterState Bank's current CRA performance.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with consumer protection laws, supervisory information from the OCC and the FDIC, information provided by CenterState, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."³⁶

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁷ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁸

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of

³⁶ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

³⁷ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

³⁸ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁹

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in a variety of consumer and commercial banking activities.⁴⁰ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by CenterState with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta, acting under delegated authority.

By order of the Board of Governors, effective December 6, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

³⁹ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

⁴⁰ CenterState primarily offers consumer and business loan and deposit products, with a focus on commercial lending. HCBF primarily offers commercial, residential, and consumer loan and deposit products, with a focus on home mortgage lending. In each of the activities in which it engages, CenterState has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

Appendix

CenterState/HCBF Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Fort Pierce Area, Florida ("Fort Pierce") – includes St. Lucie County and Martin County minus the towns of Indiantown and Hobe Sound.						
CenterState Pre-Consummation	8	\$439.1M	5.07			
HCBF	10	\$316.6M	3.65			
CenterState Post-Consummation	5	\$755.7M	8.72	1071	37	18
Gainesville Area, Florida ("Gainesville") – includes Alachua, Gilchrist, and Levy counties.						
CenterState Pre-Consummation	11	\$76.6M	1.64			
HCBF	8	\$187.6M	4.03			
CenterState Post-Consummation	8	\$264.2M	5.67	1301	13	18
Indian River County, Florida ("Indian River") – includes Indian River County.						
CenterState Pre-Consummation	14	\$68.0M	1.66			
HCBF	15	\$41.8M	1.02			
CenterState Post-Consummation	12	\$109.8M	2.68	1035	3	15
Ocala Area, Florida ("Ocala") – includes Marion County and the town of Citrus Springs in Citrus County.						
CenterState Pre-Consummation	7	\$360.4M	6			
HCBF	15	\$59.4M	0.99			
CenterState Post-Consummation	7	\$419.7M	6.99	1145	12	21
Okeechobee County, Florida ("Okeechobee") – includes Okeechobee County.						
CenterState Pre-Consummation	4	\$63.5M	12.44			
HCBF	6	\$35.0M	6.87			
CenterState Post-Consummation	3	\$98.5M	19.31	2067	171	5
Orlando Area, Florida ("Orlando") – includes Orange, Osceola, and Seminole counties, the western half of Volusia County, and the towns of Clermont and Groveland in Lake County.						
CenterState Pre-Consummation	14	\$598.6M	1.3			
HCBF	25	\$163.4M	0.35			
CenterState Post-Consummation	11	\$762.0M	1.65	1346	1	42
Saint Augustine Area, Florida ("Saint Augustine") – includes St. Johns County minus the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, Switzerland, and Hastings.						
CenterState Pre-Consummation	15	\$20.2M	0.99			
HCBF	4	\$213.2M	10.47			
CenterState Post-Consummation	4	\$233.4M	11.47	1148	21	14
Sarasota Area, Florida ("Sarasota") – includes Manatee County, Sarasota County less the portion that is both east of the Myakka River and south of Interstate 75 (including the town of North Port), the peninsular portion of Charlotte County west of the Myakka River that includes the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placida, and Gasparilla Island, including the town of Boca Grande in Lee County.						
CenterState Pre-Consummation	17	\$292.1M	1.43			
HCBF	20	\$235.8M	1.15			
CenterState Post-Consummation	10	\$527.9M	2.58	942	1	35
Tampa Bay Area, Florida ("Tampa Bay") – includes Hernando, Hillsborough, Pinellas, and Pasco counties.						
CenterState Pre-Consummation	14	\$824.9M	1.02			
HCBF	30	\$238.1M	0.29			
CenterState Post-Consummation	11	\$1,062.9M	1.31	1137	1	56
West Palm Beach Area, Florida ("West Palm Beach") – includes Palm Beach County east of Loxahatchee and the towns of Indiantown and Hobe Sound in Martin County.						
CenterState Pre-Consummation	19	\$377.5M	0.75			
HCBF	36	\$67.0M	0.13			
CenterState Post-Consummation	18	\$444.5M	0.89	991	0	47

Note: Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Robertson Holding Company, L.P.
Harrogate, Tennessee

Unified Shares, LLC
Harrogate, Tennessee

Commercial Bancgroup, Inc.
Harrogate, Tennessee

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, the Establishment of Branches, and Determination on Financial Holding Company Elections
FRB Order No. 2017-36 (December 15, 2017)

Commercial Bancgroup, Inc., and its parent companies, Robertson Holding Company, L.P., and Unified Shares, LLC, all of Harrogate, Tennessee (collectively, “Commercial”), all bank holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ have requested the Board’s approval under section 3 of the BHC Act² for Commercial Bancgroup, Inc. to merge with Citizens Bancorp, Inc. (“Citizens”), and thereby indirectly acquire Citizens’ subsidiary bank, Citizens Bank, both of New Tazewell, Tennessee.

In addition, Commercial’s subsidiary state member bank, Commercial Bank, Harrogate, Tennessee, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Citizens Bank, with Commercial Bank as the surviving entity.³ Commercial Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Citizens Bank.⁴ Robertson Holding Company, L.P., and Unified Shares, LLC, have filed with the Board elections to become financial holding companies pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 44183 (September 21, 2017)).⁶ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Commercial is the 784th largest insured depository organization in the United States. Commercial controls approximately \$760.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Commercial controls Commercial Bank, which operates in Tennessee and Kentucky. Commercial is the 42nd largest insured depository organization in

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These branch locations are listed in the Appendix.

⁵ 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

⁶ 12 CFR 262.3(b).

⁷ National deposit, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

Tennessee, controlling approximately \$536.2 million in deposits, which represent approximately 0.4 percent of the total deposits of insured depository institutions in that state.⁸

Citizens is the 3001st largest insured depository organization in the United States. Citizens controls approximately \$179.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Citizens controls Citizens Bank, which operates in Tennessee.⁹ Citizens is the 115th largest insured depository organization in Tennessee, controlling approximately \$146.9 million in deposits, which represent approximately 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Commercial would become the 635th largest insured depository organization in the United States, with consolidated assets of approximately \$1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Commercial would control consolidated deposits of approximately \$939.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, Commercial would become the 31st largest insured depository organization, controlling deposits of approximately \$683.1 million, which represent approximately 0.5 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁰ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹¹

Commercial and Citizens have subsidiary depository institutions that compete directly in the Middlesboro Area, KY-TN-VA banking market (“Middlesboro market”).¹² The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market (“market deposits”) that Commercial would control;¹³ the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁴ and other characteristics of the Middlesboro market.

⁸ State deposit, market share, and ranking data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁹ The proposal does not raise interstate issues under section 3(d) of the BHC Act because Tennessee is the home state of both Commercial and Citizens Bank, and Citizens Bank operates only in Tennessee. *See* 12 U.S.C. § 1842(d).

¹⁰ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

¹¹ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

¹² The Middlesboro market is defined as Bell County, Kentucky, and Claiborne County, Tennessee; plus the towns of Rose Hill and Ewing in Lee County, Virginia.

¹³ Local deposit and market share data are as of June 30, 2017.

¹⁴ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating

The competitive effects of the proposal in the Middlesboro market warrant a detailed review because the proposal would result in a concentration level that would exceed the thresholds in the DOJ Bank Merger Guidelines and would result in the market deposit share of Commercial exceeding 35 percent when using initial competitive screening data. Commercial is the largest competitor in the Middlesboro market, controlling approximately \$281.6 million in deposits, which represent approximately 22.7 percent of market deposits. Citizens is the fifth largest depository organization in the Middlesboro market, controlling approximately \$110.9 million in deposits, which represent approximately 12.6 percent of market deposits. On consummation of the proposal, Commercial would remain the largest depository organization in the Middlesboro market, controlling approximately \$392.5 million in market deposits, which would represent approximately 35.3 percent of market deposits. The HHI in this market would increase by 571 points, from 1626 to 2197.

The Board has considered whether factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Middlesboro market.¹⁵ Several factors indicate that the increase in concentration in the Middlesboro market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Middlesboro market is a relatively small, rural banking market and would continue to be served by nine depository institutions after consummation of the proposal. These include, apart from Commercial, one depository institution with more than a 20 percent share of market deposits, two depository institutions each with more than a 14 percent share of market deposits, and one depository institution with more than a five percent share of market deposits. In addition, the Board has considered the competitive influence of two credit unions among the nine depository institutions remaining in the Middlesboro market. These credit unions have broad membership criteria, offer a wide range of consumer banking products and operate street-level branches.¹⁶ Separated by state lines, each of these credit unions serves only a portion of the Middlesboro market. For that reason, the Board does not find that circumstances support including the deposits of these credit unions in its calculations to estimate market influence. Nevertheless, the presence of these viable credit unions, along with the other depository institutions in the Middlesboro market, suggests that Commercial would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Commercial in the Middlesboro market.¹⁷ The presence of the nine depository institu-

anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁵ The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. See *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

¹⁶ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

¹⁷ An additional assessment of the transaction, based on competitors' shares of the total number of branches in the market, also supports the view that the structural effects of the transaction would not substantially lessen competition. Branches are one way banks attract customers and are able to provide services to customers throughout the market. See, e.g., Katherine Ho and Joy Ishi, "Location and Competition in Retail Banking," *International Journal of Industrial Organization*, vol. 29, no. 5, pp. 537-546 (2011); Astrid Dick, "Demand Esti-

tions, including Commercial, together indicates that the structural effects of the transaction would not substantially lessen competition.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Middlesboro market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, in particular the structure of the relevant market, the number of remaining competitors, and other factors discussed above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Middlesboro market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁸ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Commercial and Commercial Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger with a subsequent merger of the subsidiary depository institutions.¹⁹ The asset quality, earnings, and liquidity of both Commercial Bank and Citizens Bank are consistent with approval, and Commercial appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

mation and Consumer Welfare in the Banking Industry," *Journal of Banking and Finance*, vol. 32, no. 8, pp. 1661-1676 (2008); and Robert M. Adams, Kenneth P. Brevoort, and Elizabeth K. Kiser, "Who Competes with Whom? The Case of Depository Institutions," *Journal of Industrial Economics*, vol. 55, no. 1, pp. 141-167 (2007). The increase in pro forma branch HHI, defined as the sum of the squared branch share for each institution in the market (where the branch share is defined as an institution's number of branches in the market divided by the total number of branches in the market), in the Middlesboro market would be 255 points to a level of 1786.

¹⁸ 12 U.S.C. §§ 1842(c)(2), (5), & (6), and 1828(c)(5) & (11).

¹⁹ As part of the proposed transaction, each share of Citizens' common stock would be converted into a right to receive cash based on a formula related to Citizens' total equity on the last day of the month preceding closing. Commercial has the financial resources to effect the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Commercial, Citizens, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Commercial; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Commercial, Citizens, and their subsidiary depository institutions are each considered to be well managed. Commercial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of Commercial have substantial knowledge of and experience in the banking and financial services sectors, and Commercial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Commercial's plans for implementing the proposal. Commercial has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Commercial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Commercial's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including Commercial's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Commercial and Citizens in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁰ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").²¹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²² and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²³

²⁰ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²¹ 12 U.S.C. § 2901 *et seq.*

²² 12 U.S.C. § 2901(b).

²³ 12 U.S.C. § 2903.

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Commercial Bank and Citizens Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the FDIC; confidential supervisory information; and information provided by Commercial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁴ In this case, the Board considered the supervisory views of the Reserve Bank and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),²⁶ automated loan reports, and other reports generated by the institution to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to any written complaints about its performance.²⁷ Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁵ 12 U.S.C. § 2906.

²⁶ 12 U.S.C. § 2801 *et seq.*

²⁷ See 12 CFR 228.26(b).

provide community development services, and their responsiveness to community development lending, investment, and service needs.²⁸

CRA Performance of Commercial Bank

Commercial Bank was assigned an overall “Satisfactory” rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 (“Commercial Bank Evaluation”).²⁹ The bank received “Satisfactory” ratings for each of the Lending Test and the Community Development Test.³⁰ Greater weight was given to performance in Tennessee because of the higher percentage of bank deposits, branches, and loans in that state.

Examiners concluded that Commercial Bank was responding to the credit needs of its AAs. In particular, examiners found that the loan-to-deposit ratio was reasonable given the bank’s size, financial condition, and AA credit needs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion throughout the AAs and that the distribution of loans reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners noted that Commercial Bank’s community development performance, which included loans, investments, and services, demonstrated adequate responsiveness to community development needs throughout the bank’s AAs. Examiners also noted that bank representatives provided community service hours to benefit LMI families and small businesses throughout the bank’s AAs.

CRA Performance of Citizens Bank

Citizens Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of March 9, 2015 (“Citizens Bank Evaluation”).³¹ Examiners focused on the bank’s loan-to-deposit ratio and lending record within the bank’s AAs. Examiners found that Citizens Bank’s loan-to-deposit ratio reflected reasonable responsiveness to the credit needs of the AAs, given the institution’s size, financial condition and AAs. Examiners also found that the majority of the bank’s home mortgage and small business lending was originated within its AAs, and its overall lending to borrowers of different incomes was reasonable. Examiners determined that the bank’s small business lending reflected excellent performance.

²⁸ See 12 CFR 228.26(c).

²⁹ The Commercial Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and a sample of commercial loans originated from January 1, 2013, through December 31, 2014. The evaluation period for community development lending, investments, and services was from April 17, 2012, to September 20, 2015.

³⁰ The Commercial Bank Evaluation included a full scope evaluation of the bank’s AA consisting of Knox and Union counties within the Knoxville, Tennessee Metropolitan Statistical Area (“MSA”), as well as its AA consisting of Bell-Harlan and Knox counties in Kentucky, which are not part of an MSA. A limited scope evaluation was performed of the bank’s AA consisting of Claiborne County, Tennessee, which is not part of any MSA, and of the bank’s AA consisting of Sullivan County within the Kingsport-Bristol-Bristol, Tennessee-Virginia MSA.

³¹ The Citizens Bank Evaluation was conducted using the Small Bank Examination Procedures. Examiners reviewed a sample of small business loans originated from January 1, 2012, to December 31, 2014, and also reviewed all HMDA-reportable loans for 2013 and 2014. The Citizens Bank Evaluation included a full scope evaluation of the bank’s AA located within Claiborne County, Tennessee, which is not part of any MSA. A limited scope evaluation was performed of the portion of the bank’s AA located within the Knoxville, Tennessee MSA and of the bank’s AA consisting of Hamblen County, which is part of the Morristown, Tennessee MSA.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Commercial Bank conducted by Reserve Bank examiners, which included a review of the bank's compliance risk management program and the bank's compliance with consumer protection laws and regulations. The Board has also considered the results of the most recent consumer compliance examination of Citizens Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of Commercial Bank and Citizens Bank, into account in evaluating the proposed transaction, including in considering whether Commercial has the experience and resources to ensure that Commercial Bank helps to meet the credit needs of the communities within its AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Commercial represents that the combined organization, with its greater size and capabilities, would have an increased lending limit and thereby would increase the availability of credit to customers and potential customers of both banks, including small- to mid-sized businesses. In addition, Commercial represents that customers of Citizens Bank would benefit from Commercial Bank's expansive branch network, and customers of Commercial Bank would benefit from additional banking offices in Claiborne and Hamblen counties, Tennessee, as well as a loan production office in Sullivan County, Tennessee. Commercial also represents that customers in communities served by Citizens Bank will benefit from the availability of additional products and services currently offered by Commercial Bank. Finally, Commercial represents that the increased size and scale of the combined organization may permit it to develop and expand product and service offerings to its customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the Reserve Bank and the FDIC, confidential supervisory information, information provided by Commercial, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."³²

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of

³² Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³³ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁴

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁵

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.³⁶ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

Commercial Bank has applied under section 9 of the FRA to establish branches at the current locations of Citizens Bank.³⁷ The Board has assessed the factors it is required to

³³ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³⁵ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁶ Commercial offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Citizens also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, Commercial has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

³⁷ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may retain any branch following a merger that under state law may be established as a new branch of the

consider when reviewing an application under that section.³⁸ Specifically, the Board has considered Commercial Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.³⁹ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Elections

As noted, Robertson Holding Company, L.P., and Unified Shares, LLC, have elected to become financial holding companies in connection with the proposal. Robertson Holding Company, L.P., and Unified Shares, LLC, have certified that, upon consummation of the proposal, they and the depository institutions they would control would be well capitalized and well managed, and Robertson Holding Company, L.P., and Unified Shares, LLC, have provided all the information required under the Board's Regulation Y.⁴⁰ Based on all the facts of record, the Board determines that the elections by Robertson Holding Company L.P., and Unified Shares, LLC, will become effective upon consummation of the proposal if, on that date, they are well capitalized and well managed and all depository institutions they control are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Commercial and Commercial Bank with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective December 15, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§36(b)(2) and (c). Upon consummation, Commercial Bank's branches would be permissible under applicable state law. *See* Tenn. Code Ann. § 45-2-614.

³⁸ 12 U.S.C. § 322; 12 CFR 208.6.

³⁹ Upon consummation of the proposed transaction, Commercial Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

⁴⁰ *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1).

Appendix**Branches to Be Established by Commercial Bank**

1. 130 South Broad Street, New Tazewell, Tennessee 37825
2. 7100 Cumberland Gap Parkway, Harrogate, Tennessee 37752
3. 155 Terrace Lane, Morristown, Tennessee 37813

NATCOM Bancshares, Inc.
Superior, Wisconsin

Order Approving the Acquisition of Shares of a Bank Holding Company
FRB Order No. 2017-37 (December 18, 2017)

NATCOM Bancshares, Inc. (“Natcom”), Superior, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire 49.0 percent of the voting shares of Republic Bancshares, Inc. (“Republic”), and thereby indirectly acquire control of Republic Bank, Inc. (“Republic Bank”), both of Duluth, Minnesota.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 50128 (October 30, 2017)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Natcom is the 1227th largest insured depository organization in the United States by total assets.⁵ Natcom controls approximately \$493.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Natcom controls National Bank of Commerce, Superior, Wisconsin, with assets of \$610.0 million, which operates in Minnesota and Wisconsin. Natcom is the 168th largest insured depository institution in Minnesota, controlling deposits of approximately \$89.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷

Republic is the 1751st largest insured depository organization in the United States by total assets. Republic controls approximately \$305.4 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Republic Bank, with assets of \$398.5 million, operates in Minnesota. Republic is the 56th largest insured depository institution in Minnesota, controlling deposits of approximately \$290.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Management of Republic and Republic Bank opposes Natcom’s proposal and submitted comments to the Board urging denial on several grounds. The Board previously has stated, in evaluating acquisition proposals, that it must apply the criteria in the BHC Act in the same manner to all proposals, whether they are supported or opposed by the management

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The BHC Act contemplates that a bank holding company may seek to acquire less than a majority interest in another bank holding company or bank. *See* 12 U.S.C. §1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a majority interest. *See, e.g., C-B-G, Inc.*, 93 *Federal Reserve Bulletin* C88 (2007) (approving the acquisition of up to 35 percent of a bank holding company); *Juniata Valley Financial Corp.*, 92 *Federal Reserve Bulletin* C171 (2006) (approving the acquisition of up to 39.2 percent of a bank). The Board notes, however, that the BHC Act requires Natcom to receive the Board’s approval before directly or indirectly acquiring any additional shares of Republic or RepublicBank. *See* 12 U.S.C. § 1842(a)(3).

⁴ 12 CFR 262.3(b).

⁵ National asset data are as of September 30, 2017. National deposit, ranking, and market-share data are as of June 30, 2017, unless otherwise noted.

⁶ In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

⁷ State deposit, ranking, and market-share data are as of June 30, 2016, unless otherwise noted.

of the institutions to be acquired.⁸ Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the Act. The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the scope of factors the Board is authorized to consider under the BHC Act.⁹

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by the commenters and the information submitted by Natcom. In addition, the Board has consulted with relevant supervisory agencies and reviewed confidential supervisory information, including examination reports of the institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board has concluded that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.¹⁰ Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.¹¹ In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.¹²

For purposes of the BHC Act, the home state of Natcom is Wisconsin, and Republic Bank's home state is Minnesota.¹³ Minnesota has a five-year minimum age requirement, and Republic Bank has been in existence for more than five years.¹⁴ In addition, Natcom is well capitalized and well managed under applicable law, and its subsidiary bank, National Bank of Commerce, has an "Outstanding" rating under the Community Reinvestment Act of 1977 ("CRA").¹⁵

⁸ See, e.g., *Central Pacific Financial Corp.*, 90 *Federal Reserve Bulletin* 93, 93 (2004); *North Fork Bancorporation, Inc.*, 86 *Federal Reserve Bulletin* 767, 768 (2000); *The Bank of New York Company, Inc.*, 74 *Federal Reserve Bulletin* 257, 258–59 (1988).

⁹ See *supra* note 9.

¹⁰ 12 U.S.C. § 1842(d)(1)(A).

¹¹ 12 U.S.C. § 1842(d)(1)(B).

¹² 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. § 1841(o)(4)–(7).

¹³ See 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A national bank's home state is the state in which the main office of the bank is located.

¹⁴ See Minn. Stat. § 48.93 subd. 4(6).

¹⁵ 12 U.S.C. § 2901 *et seq.*

On consummation of the proposed transaction, Natcom would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. In addition, Natcom would control less than 30 percent of the total deposits of insured depository institutions in Minnesota, the only state in which Natcom and Republic have overlapping banking operations.¹⁶ The Board has considered all other requirements under section 3(d) of the BHC Act, including Natcom's record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹⁷

The Board's analysis of the competitive effects of the proposal assumes a full merger between Natcom, Republic, and their subsidiary banks, with Natcom and National Bank of Commerce as the surviving entities. Accordingly, the analysis assumes that Republic Bank would not compete independently of Natcom and National Bank of Commerce.¹⁸

National Bank of Commerce and Republic Bank compete directly in the Duluth, Minnesota banking market ("Duluth market").¹⁹ The Board has considered the competitive effects of the proposed acquisition in the Duluth market. In particular, the Board has considered the number of competitors that would remain in the banking market; the rela-

¹⁶ Minnesota does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹⁷ 12 U.S.C. § 1842(c)(1).

¹⁸ See *ANB Holding Company, Ltd.*, 83 *Federal Reserve Bulletin* 902, 903-04 (1997) (approving ANB Holding Company, Ltd.'s ("ANB") acquisition of 41 percent of Lakeside Bancshares, Inc., a bank holding company that directly competed in the same banking market as ANB).

The commenters assert that by virtue of becoming a shareholder of Republic, Natcom would be able to access sensitive business and customer information regarding both Republic and Republic Bank that would allow Natcom to engage in anti-competitive behavior. Natcom represents that it entered into a consent order with the Minnesota Department of Commerce ("Department") in connection with the Department's recent approval of a corresponding application to the state to acquire an interest in Republic. The consent order limits Natcom's rights to receive certain information that otherwise would be available to any shareholder of Republic under Minnesota law. Pursuant to the consent order, Natcom would not have access to certain information regarding Republic's share register, records of shareholder and board proceedings, articles and bylaws, certain financial statements, reports made to shareholders, certain voting trust and other shareholder control agreements, names and business addresses of the directors and principal officers, agreements incorporated by reference into the articles of incorporation, and other information that would be available to any shareholder that could show that the request was for a proper purpose. See Minn.Stat. § 302A.461, sub.4. Republic has appealed the Department's order approving the application to a court of competent jurisdiction, which could as a result set aside the consent order, and has requested that the Board postpone its decision until the appeal is resolved fully. Action on this proposal would not interfere with the court's ability to resolve the pending litigation. *M&P Community Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C156, C156 n.7 (2006).

¹⁹ The Duluth market is defined as Lake County; Fairbanks, Ellsburg, Ault, Kelsey, Cotton, Pequaywan, Elmer, Meadowlands, Northland, North Star, Alden, Van Buren, Ness, Albarn, New Independence, Fredenberg, Gnesen, Normanna, Halden, Floodwood, Culver, Industrial, Grand Lake, Canosia, Rice Lake, Lakewood, Duluth, Prairie Lake, Fine Lakes, Arrowhead, Stoney Brook, Brevator, Solway, and Midway townships; the cities of Hermantown, Proctor, and Duluth; Potshot Lake and Whiteface Reservoir Unorganized Territories; and Linwood Lake Unorganized Territory south of a horizontal line drawn from the northern border of Ault Township in Saint Louis County; and Carlton County (minus Split Rock, Silver, Barnum, Moose Lake, and Holyoke townships and Clear Creek Unorganized Territory), all of Minnesota; and Douglas County, Wisconsin.

tive shares of total deposits of insured depository institutions in the market (“market deposits”) that Natcom would control;²⁰ the concentration levels of market deposits and the increase in these levels as measured by the HerfindahlHirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²¹ and other characteristics of the market.

Using the initial competitive screening data, National Bank of Commerce is the third largest depository institution in the Duluth market, controlling approximately \$421.2 million in deposits, which represent 14.3 percent of market deposits. Republic Bank is the fourth largest depository institution in the market, controlling approximately \$272.7 million in deposits, which represent 9.3 percent of market deposits. If considered a combined organization on consummation of the proposal, National Bank of Commerce would be the second largest depository institution in the Duluth market, controlling approximately \$694.0 million in deposits, which would represent approximately 23.6 percent of market deposits. The HHI in this market would increase 265 points, from 1578 to 1843.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Duluth market.²² In particular, five credit unions exert a competitive influence in the Duluth market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.²³ The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in calculating market influence. This weighting takes into account the limited lending done by credit unions to small businesses relative to commercial banks’ lending levels.

This adjustment suggests that the resulting market concentration in the Duluth market is less significant than would appear from the initial competitive screening data, which focused on commercial-bank and thrift competitors. After consummation, and adjusting to

²⁰ Deposit and market share data are as of June 30, 2016, and unless otherwise noted, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in market share calculations on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52(1991).

²¹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

²² The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. See *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

²³ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2d Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006). In this case, Superior Choice Credit Union, Members Cooperative Credit Union, Centricity Credit Union, HarborPointe Credit Union, and Northwoods Credit Union together control approximately \$357.5 million in deposits in the Duluth market that, on a 50 percent weighted basis, represent approximately 10.8 percent of market deposits.

reflect competition from credit unions in the market, the market concentration level in the Duluth market as measured by the HHI would increase by 211 points, from 1282 to 1493, a level that would be within the DOJ Bank Merger Guidelines, and the market share of Natcom would increase to 21.0 percent. In addition to the five credit unions, 20 insured depository institutions other than Natcom would remain in the market, including one insured depository institution with a market share of more than 25 percent.

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Duluth market or in any other relevant banking market. Accordingly, the Board finds that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁴ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources.

Natcom and National Bank of Commerce are both well capitalized and would remain so on consummation of the proposal.²⁵ The proposed acquisition would be funded from Natcom's cash on hand and proceeds from a loan.²⁶ The asset quality, earnings, and liquidity of Natcom are consistent with approval, and Natcom appears to have adequate resources to absorb the costs of the proposal. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved.²⁷ The Board has reviewed the examination records of Natcom, Republic, and their subsid-

²⁴ 12 U.S.C. § 1842(c)(2), (5), and (6).

²⁵ The commenters asserted that the proposed acquisition will negatively impact the financial condition and operations of Republic Bank through the loss of customers and certain key employees. The Board notes that Republic and Republic Bank would both remain well capitalized on consummation of the proposal, and Natcom, which is in satisfactory financial condition, has represented that it understands its statutory obligation to serve as a source of strength for Republic Bank. *See* 12 U.S.C. § 1831o-1; 12 CFR 225.4(a)(1).

²⁶ Natcom has the financial resources to fund the proposal and the financial strength to support the debt obligation.

²⁷ The commenters asserted that Natcom's becoming a shareholder of Republic would cause Republic to lose its ability to be treated as an S corporation, which would result in the loss of significant tax savings for the owners

ary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Natcom, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Natcom, Republic, and their subsidiary depository institutions are each considered to be well managed. Natcom's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and Natcom's risk-management program is consistent with approval of this expansionary proposal. The existing management and the risk management policies and practices of Republic and Republic Bank would remain in place following the proposed acquisition, and these are considered satisfactory from a supervisory perspective.

Based on all the facts of record, including the supervisory record and managerial and operational resources of Natcom, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as records of effectiveness of Natcom and Republic in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁸ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.³⁰

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

of Republic. In addition, the commenters asserted that Natcom's proposal could result in litigation between the shareholders of Republic because some courts have held that selling shares in a manner that results in the loss of S-corporation status is a breach of a minority shareholder's fiduciary duty to its majority shareholder. Loss of tax benefits for the owners of a firm and potential shareholder litigation are matters of general corporate and tax law to be adjudicated by courts. Those matters do not fall within the scope of statutory factors the Board is required to consider. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

²⁸ 12 U.S.C. § 1842(c)(2).

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of National Bank of Commerce and Republic Bank; the fair lending and compliance records of both banks; the supervisory views of the Office of the Comptroller of the Currency (“OCC”) and the Federal Deposit Insurance Corporation (“FDIC”); confidential supervisory information provided by Natcom; and the public comments received on the proposal.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.³¹ In this case, the Board considered the supervisory views of the OCC and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³² An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution’s primary federal supervisor of the institution’s overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution’s lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution’s data reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”),³³ automated loan reports, and other reports generated by the institution in order to assess the institution’s lending activities with respect to borrowers and geographies of different income levels. The institution’s lending performance is based on the institution’s (1) loan-to-deposit ratio, (2) loan originations for sale to the secondary market, (3) lending-related activities in its assessment areas (“AAs”), (4) record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, (5) geographic distribution of loans, and (6) record of taking action in response to written complaints about the institution’s performance. In addition to the lending test, intermediate small institutions, such as National Bank of Commerce, are subject to a community development test that evaluates the number and amounts of the institution’s community development loans and qualified investments, the extent to which the institution provides community development services, and the institution’s responsiveness through such activities to community development lending, investment, and service needs.³⁴

CRA Performance of National Bank of Commerce

National Bank of Commerce was assigned an overall “Outstanding” rating at its most recent CRA performance evaluation by the OCC, as of March 7, 2016 (“National Bank of

³¹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

³² 12 U.S.C. § 2906.

³³ 12 U.S.C. § 2801 *et seq.*

³⁴ See 12 CFR 228.26.

Commerce Evaluation”).³⁵ National Bank of Commerce received “Outstanding” ratings for both the Lending Test and the Community Development Test.³⁶

Examiners determined that the bank’s loan-to-deposit ratio was reasonable given the bank’s size and AA credit needs. Examiners noted that a substantial majority of National Bank of Commerce’s loans were originated in its AA. Examiners also noted that National Bank of Commerce’s distribution of commercial loans reflected reasonable penetration among businesses of different sizes. In addition, examiners found that the bank’s geographic distribution of business loans reflected excellent dispersion throughout the bank’s AA.

Examiners found that National Bank of Commerce’s community development activities showed excellent responsiveness to the bank’s AA needs. Examiners noted that the bank’s performance in extending community development loans was excellent and that the level of qualified investments demonstrated adequate responsiveness to community needs. Examiners also found that National Bank of Commerce’s community development services were excellent and that the bank offered a variety of products and services to customers of all income levels and geographies.

CRA Performance of Republic Bank

Republic Bank was assigned an overall “Outstanding” rating at its most recent CRA performance evaluation by the FDIC, as of July 10, 2017 (“Republic Bank Evaluation”).³⁷ Republic Bank received a “Satisfactory” rating for the Lending Test and an “Outstanding” rating for the Community Development Test.³⁸

Examiners found that the bank’s loan-to-deposit ratio was more than reasonable given the bank’s size, financial condition, and AA credit needs. Examiners noted that the majority of the bank’s small business and home mortgage loans were originated in its AA. Examiners also noted that Republic Bank’s distribution of borrowers reflected reasonable penetration of loans among businesses of different sizes and individuals of different income levels. Examiners found that the geographic distribution of loans reflected reasonable dispersion of loans to small businesses and excellent dispersion of loans to individuals throughout the bank’s AA.

Examiners found that Republic Bank demonstrated excellent responsiveness to its AA community development needs through community development loans and services. Examiners also noted that the bank’s qualified investments reflected excellent responsiveness to its AA community development needs.

³⁵ The National Bank of Commerce Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending and community development tests described above. The National Bank of Commerce Evaluation reviewed a sample of commercial loans from January 1, 2014, to December 31, 2015. Examiners also reviewed community development loans, investments, and services from May 1, 2012, to December 31, 2015.

³⁶ The National Bank of Commerce Evaluation reviewed the bank’s activities in the Duluth, Minnesota–Wisconsin multistate metropolitan statistical area.

³⁷ The Republic Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed a sample of selected small business loans originated or renewed between January 1, 2016, and December 31, 2016, and all home mortgage loans reported on the bank’s 2015 and 2016 HMDA loan application registers. Examiners reviewed community development loans, qualified investments, and community development services since June 4, 2014.

³⁸ The Republic Bank Evaluation reviewed the bank’s activities in eastern Carlton and southern Saint Louis counties, both in Minnesota.

Views of the OCC

The Board has considered the record of National Bank of Commerce in complying with fair lending and other consumer protection laws. The OCC conducted a recent consumer compliance examination of National Bank of Commerce, which included a review of the bank's consumer compliance program and the bank's compliance with consumer protection laws and regulations. The Board has taken this information into account in evaluating this proposal.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Natcom, the comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.³⁹

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."⁴⁰

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴¹ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴²

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are

³⁹ The commenters asserted that the acquisition would result in a loss of a community institution and the services that Republic and Republic Bank provide. They also noted that Republic Bank is rated "Outstanding" for CRA, implying that the transaction would negatively affect Republic Bank's CRA performance. As discussed above, Natcom is acquiring a minority interest in Republic. Natcom represents that the proposal would not result in any changes to the programs, products, or services currently offered by Republic Bank. Upon consummation of the proposed transaction, both Republic and Republic Bank would continue to operate independently. In addition, as noted above, National Bank of Commerce also is rated "Outstanding" for CRA.

⁴⁰ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

⁴¹ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

⁴² For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴³

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Natcom's acquisition of a minority interest in Republic would not result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. The transaction would not be likely to pose systemic risks.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Natcom with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Minneapolis, acting under delegated authority.

By order of the Board of Governors, effective December 18, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

⁴³ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25–26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

Order Issued Under Sections 3 and 4 of the Bank Holding Company Act

Sandy Spring Bancorp, Inc.
Olney, Maryland

Order Approving the Merger of Bank Holding Companies, the Acquisition of a Nonbanking Subsidiary, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-32 (November 22, 2017)

Sandy Spring Bancorp, Inc. (“Sandy Spring”), Olney, Maryland, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with WashingtonFirst Bankshares, Inc. (“WashingtonFirst”), and thereby indirectly acquire WashingtonFirst Bank, both of Reston, Virginia. Sandy Spring has also requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y³ to acquire 1st Portfolio, Inc. (“1st Portfolio”), Fairfax, Virginia, a nonbanking subsidiary of WashingtonFirst that is engaged in financial and investment advisory activities.

In addition, Sandy Spring’s subsidiary state member bank, Sandy Spring Bank, Olney, Maryland, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with WashingtonFirst Bank, with Sandy Spring Bank as the surviving entity.⁴ Sandy Spring Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of WashingtonFirst Bank.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 31973 (July 11, 2017)).⁶ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Sandy Spring, with consolidated assets of approximately \$5.3 billion, is the 201st largest insured depository organization in the United States. Sandy Spring controls approximately \$3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Sandy Spring controls Sandy Spring Bank, which operates in the District of Columbia, Maryland, and Virginia. Sandy Spring is the 27th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$3.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction.⁸ Sandy Spring is the 8th largest insured depository organization in Maryland, controlling deposits

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

⁴ 12 U.S.C. § 1828(c).

⁵ 12 U.S.C. § 321. These locations are listed in the Appendix.

⁶ 12 CFR 262.3(b).

⁷ National asset and deposit data are as of June 30, 2017, unless otherwise noted.

⁸ State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

of approximately \$3.2 billion, which represent approximately 2.3 percent of the total deposits of insured depository institutions in that state. Sandy Spring is the 59th largest insured depository organization in Virginia, controlling deposits of approximately \$329.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

WashingtonFirst, with consolidated assets of approximately \$2.1 billion, is the 383rd largest insured depository organization in the United States. WashingtonFirst controls approximately \$1.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. WashingtonFirst controls WashingtonFirst Bank, which operates in the District of Columbia, Maryland, and Virginia. WashingtonFirst is the 14th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$372.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction. WashingtonFirst is the 62nd largest insured depository organization in Maryland, controlling deposits of approximately \$137.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. WashingtonFirst is the 22nd largest insured depository organization in Virginia, controlling deposits of approximately \$1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Sandy Spring would become the 165th largest insured depository organization in the United States, with consolidated assets of approximately \$7.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sandy Spring would control total deposits of approximately \$5.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sandy Spring would become the 14th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$375.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction. Sandy Spring would remain the 8th largest insured depository organization in Maryland, controlling deposits of approximately \$3.3 billion, which represent approximately 2.4 percent of the total deposits of insured depository institutions in that state. In Virginia, Sandy Spring would become the 18th largest insured depository organization, controlling deposits of \$1.4 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.⁹ Section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.¹⁰ The Board may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1831u(a)(1).

years.¹¹ In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company would upon consummation control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.¹²

For purposes of the BHC Act, the home state of Sandy Spring is Maryland, and WashingtonFirst Bank is located in the District of Columbia, Maryland, and Virginia.¹³ For purposes of section 44 of the FDI Act, the home state of Sandy Spring Bank is Maryland, and the home state of WashingtonFirst Bank is Virginia.¹⁴ Sandy Spring and Sandy Spring Bank are well capitalized and well managed under applicable law, and Sandy Spring Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”). Neither the District of Columbia nor Virginia has statutory minimum age requirements,¹⁵ and WashingtonFirst Bank has been in existence for more than five years.

On consummation of the proposed transaction, Sandy Spring would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Maryland imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹⁶ The combined organization would control approximately 0.8 percent of the total amount of deposits of insured depository institutions in the District of Columbia, approximately 2.4 percent of the total amount of deposits of insured depository institutions in Maryland, and approximately 0.5 percent of the total amount of deposits of insured depository institutions in Virginia, the only states in which Sandy Spring and WashingtonFirst have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including Sandy Spring Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under both statutes.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁷ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to

¹¹ 12 U.S.C. § 1842(d)(1)(B); 12 U.S.C. § 1831u(a)(5).

¹² 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

¹³ *See* 12 U.S.C. § 1841(o)(4). For purposes of the BHC Act, a bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later, and a state bank’s home state is the state in which the bank is chartered.

¹⁴ For purposes of section 44 of the FDI Act, a state bank’s home state is the state in which the bank is chartered. 12 U.S.C. § 1831u(g)(4).

¹⁵ *See* D.C. Code § 26-731 - 741; Va. Code Ann. § 6.2-849 - 859.

¹⁶ Md. Code Ann., Fin. Inst. § 5-1013. The District of Columbia and Virginia do not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹⁷ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹⁸ In addition, as described in more detail below, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.¹⁹

Sandy Spring and WashingtonFirst have subsidiary depository institutions that compete directly in the Washington, District of Columbia-Maryland-Virginia-West Virginia banking market (“Washington market”).²⁰ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market (“market deposits”) that Sandy Spring would control;²¹ the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²² and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Washington market. On consummation of the proposal, the Washington market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this market would be small, and numerous competitors would remain in the market.²³

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Washington market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

¹⁸ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

¹⁹ 12 U.S.C. § 1843(j)(2)(A).

²⁰ The Washington market includes the District of Columbia; the Maryland counties of Charles, Calvert, Frederick, Montgomery, and Prince George’s; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; the Virginia counties of Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren; the Virginia cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and Jefferson County, West Virginia.

²¹ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

²² Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²³ Sandy Spring operates the 12th largest depository institution in the Washington market, controlling approximately \$3.0 billion in deposits, which represent 1.6 percent of market deposits. WashingtonFirst operates the 16th largest depository institution in the same market, controlling approximately \$1.6 billion in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Sandy Spring would remain the 12th largest depository organization in the market, controlling deposits of approximately \$4.6 billion, which represent 2.4 percent of market deposits. The HHI for the Washington market would increase by 2 points to 998, and 77 competitors would remain in the market.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Washington market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under sections 3 and 4 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁴ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Sandy Spring and WashingtonFirst are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured primarily as an exchange of shares, with a subsequent merger of the subsidiary depository institutions.²⁵ The asset quality, earnings, and liquidity of Sandy Spring Bank and WashingtonFirst Bank are consistent with approval, and Sandy Spring appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Sandy Spring, WashingtonFirst, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sandy Spring; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenters.

²⁴ 12 U.S.C. §§ 1842(c)(2), (5), and (6); 1843(j)(4); 1828(c)(5) and (11).

²⁵ To effect the holding company merger, a wholly owned subsidiary of Sandy Spring formed to facilitate the transaction would merge with WashingtonFirst, with WashingtonFirst as the surviving entity ("First-Step Merger"). At the effective time of the First-Step Merger, each share of WashingtonFirst common stock would be converted into a number of shares of Sandy Spring common stock based on an exchange ratio. Immediately thereafter, WashingtonFirst would merge with Sandy Spring, with Sandy Spring as the surviving entity. WashingtonFirst Bank would then merge with and into Sandy Spring Bank, with Sandy Spring Bank as the surviving entity. As part of the holding company merger, Sandy Spring would acquire 1st Portfolio from WashingtonFirst and immediately thereafter transfer 1st Portfolio to Sandy Spring Bank.

Sandy Spring, WashingtonFirst, and their subsidiary depository institutions are each considered to be well managed. Sandy Spring has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Sandy Spring's directors and senior executive officers have significant knowledge of and experience in the banking and financial services sectors, and Sandy Spring's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Sandy Spring's plans for implementing the proposal. Sandy Spring has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Sandy Spring would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sandy Spring's management has the experience and resources to operate the combined organization in a safe and sound manner.²⁶ Sandy Spring plans to integrate WashingtonFirst's existing management and personnel in a manner that augments Sandy Spring's management.²⁷

Based on all the facts of record, including Sandy Spring's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Sandy Spring and WashingtonFirst in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁸ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community,

²⁶ One commenter asked the Board to consider the diversity of Sandy Spring's management in reviewing the proposed transaction. While the Board encourages all firms to promote diversity in their management and workforce, the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act and Bank Merger Act are limited and specifically defined. *See, e.g., PacWest Bancorp*, 102 *Federal Reserve Bulletin* 82, 88 n. 24 (2015); *CIT Group, Inc.*, 102 *Federal Reserve Bulletin* 1, 7 n. 24 (2015); *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n.31 (2004). *See also Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). Other provisions of law authorize the Board, together with the other federal financial supervisory agencies, to monitor the efforts of regulated entities to promote diversity and inclusion. Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, 80 *Federal Register* 33016 (June 10, 2015). *See* Pub. L. No. 111-203, 124 Stat. 1376, 1541-44 (2010), codified at 12 U.S.C. § 5452.

²⁷ On consummation, WashingtonFirst's president and chief executive officer, as well as the chairman and two additional members of its board of directors, will be appointed to the boards of directors of Sandy Spring and Sandy Spring Bank.

²⁸ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁹ 12 U.S.C. § 2901(b).

including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.³⁰

In addition, the Board considers the banks’ overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution’s business model, its marketing and outreach plans, the organization’s plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Sandy Spring Bank and WashingtonFirst Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Richmond (“Reserve Bank”) and the FDIC; confidential supervisory information; information provided by Sandy Spring; and the public comments received on the proposal.

Public Comments Regarding the Proposal

Three commenters objected to the proposal based on alleged deficiencies in the CRA performance and fair lending record of Sandy Spring Bank.³¹ All three commenters alleged low levels of lending to minority borrowers, and/or in majority-minority areas, in communities served by Sandy Spring Bank, as reflected in data reported under the Home Mortgage Disclosure Act (“HMDA”).³² One commenter alleged high denial rates in 2015 by Sandy Spring Bank to African American applicants and low levels of lending by WashingtonFirst Bank to African American and Hispanic applicants in certain communities. Two commenters criticized Sandy Spring Bank’s lending to LMI individuals and in LMI census tracts, and one such commenter also criticized the bank’s lending levels to small businesses and its levels of community development loans and investments in certain communities. Specific geographic areas of concern for commenters included the District of Columbia; Montgomery County, Maryland; Prince George’s County, Maryland; Baltimore City, Maryland; and Baltimore County, Maryland.

One commenter alleged that the percentages of Sandy Spring Bank’s branch locations in LMI and majority-minority census tracts in Montgomery County, Maryland, and Northern Virginia are inadequate, and that the proposed transaction will not increase the bank’s branching presence in LMI and majority-minority markets. Further, one commenter generally criticized the adequacy of information provided by Sandy Spring Bank regarding potential branch closings that would occur in connection with the proposed transaction.

³⁰ 12 U.S.C. § 2903.

³¹ Two commenters requested that the Board not approve the proposal until Sandy Spring enters into a community benefits plan that outlines how the bank plans to help meet the convenience and needs of the communities it serves. The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. *See, e.g., Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 at 488 n.18 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas (“AAs”).

³² 12 U.S.C. § 2801 *et seq.*

Businesses of the Involved Institutions and Response to the Comments

Sandy Spring provides a broad range of financial products and services, primarily through Sandy Spring Bank, which operates through a branch network in the District of Columbia, Maryland, and Virginia. Products and services offered by Sandy Spring Bank include retail and commercial banking products and services; consumer, commercial, and mortgage lending; trust and investment services; and insurance services.

WashingtonFirst operates primarily through WashingtonFirst Bank and offers a similar range of retail and commercial products and services through branches located in the District of Columbia, Maryland, and Virginia. WashingtonFirst Bank's products and services include retail and commercial banking products and services; consumer, commercial, and mortgage lending; and financial and investment advisory services.

Sandy Spring denies the commenters' allegations regarding Sandy Spring Bank's CRA and fair lending records and asserts that the bank's record of meeting the convenience and needs of the communities the bank serves is consistent with the criteria for approval of the proposal. Sandy Spring asserts that the allegations based on HMDA data do not fully represent Sandy Spring Bank's lending record. Sandy Spring represents that Sandy Spring Bank has made significant efforts in recent years to serve the credit needs of its communities, including increasing mortgage lending to LMI borrowers and in LMI census tracts. Sandy Spring also states that the bank has taken steps to enhance the delivery of products and services to LMI individuals in its AA, such as hiring mortgage bankers with experience in lending to LMI individuals, expanding and enhancing the role of its CRA and Fair Lending Committee, and adopting a Community Development and Fair Lending Implementation Plan ("Implementation Plan") containing priorities, goals, and initiatives for home mortgage, small business, and community development lending, among other areas. Sandy Spring represents that initiatives being undertaken under the plan include enhancement of products that serve LMI communities, hiring mortgage bankers and CRA specialists to originate loans in LMI communities, and outreach to educate mortgage bankers about CRA products.

Sandy Spring represents that Sandy Spring Bank's small business lending has increased in dollar amount since its last CRA performance evaluation. Moreover, Sandy Spring represents that in 2016, Sandy Spring Bank exceeded peers in small business lending in LMI census tracts within its AA and in high minority census tracts in several counties. Sandy Spring also represents that its Implementation Plan includes initiatives related to small business lending, including proactive outreach to prospective and existing business clients in LMI communities. Further, Sandy Spring denies a commenter's allegations regarding its levels of community development lending and investments and represents that its community development loans and investments have significantly increased since its last CRA performance evaluation.

Sandy Spring also asserts that it maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations. Sandy Spring contends that it has comprehensive policies and procedures that ensure both safe and sound lending and equal access to credit for creditworthy applicants, including ongoing fair lending training, internal fair lending and CRA audits, and annual assessments of underwriting and pricing decisions. Sandy Spring represents that the denial rates that a commenter referenced reflect determinations based on applicants' credit history, existing debt levels, and other non-discriminatory factors.

Sandy Spring represents that Sandy Spring Bank has a comprehensive branching strategy and procedures for determining its branch locations, and a key component of its decisions

to open or close branches is the demographics of the census tract in which the branch is located and the census tracts surrounding the branch location. Moreover, Sandy Spring asserts that with each branch decision, the overall network of branching and availability of services are considered from a CRA perspective to ensure that banking needs are met for a diversified population without exclusion. Sandy Spring represents that Sandy Spring Bank has not specifically identified branches that it intends to close in connection with the proposed transaction, but will evaluate its continued coverage in LMI and high minority census tracts as important factors when considering branch consolidation.³³

Sandy Spring denies one commenter's allegations that WashingtonFirst Bank engages in discriminatory lending practices. Sandy Spring asserts that the allegations based on HMDA data do not fully represent WashingtonFirst Bank's lending record. Sandy Spring asserts that WashingtonFirst maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations and has comprehensive policies and procedures that ensure both safe and sound lending and equal access to credit for creditworthy applicants, such as ongoing fair lending training and internal fair lending and CRA audits.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.³⁴ In this case, the Board considered the views of the Reserve Bank and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors,

³³ Sandy Spring also represents that once Sandy Spring Bank determines which branches it will close, it will comply with its branch closure policy and will follow all applicable regulations with respect to notice of branch closures. The Board notes that section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

³⁴ See *Interagency Questions and Answers Regarding Community Reinvestment*, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³⁵ 12 U.S.C. § 2906.

including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁶ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.³⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Sandy Spring Bank

Sandy Spring Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of July 14, 2014 ("Sandy Spring Bank Evaluation").³⁸ The bank received a "Low Satisfactory" rating for the Lending Test, and "High Satisfactory" ratings for each of the Investment and the Service Tests.

Examiners concluded that, overall, the bank's lending activity was consistent with the bank's capacity and market presence. Examiners noted that a substantial majority of the bank's HMDA and small business loans were originated within the bank's AA. Examiners found that the bank's geographic lending distribution performance ranged from poor to good by loan product and year, but found the bank's geographic distribution performance to be adequate overall. Examiners also found that, overall, Sandy Spring Bank's distribution of loans by borrower income and revenue size of business was adequate. Examiners explained that this conclusion was based on findings that the bank's distribution of HMDA loans to borrowers of different income levels was adequate and its distribution of loans to businesses of different revenue sizes was good, and that greater weight was given to the bank's HMDA lending performance. Examiners also determined that Sandy Spring Bank's community development lending activity was adequate, considering the bank's

³⁶ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

³⁷ Other information relevant to credit decisions could include credit history, debt-to-income ratio, and loan-to-value ratio. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³⁸ The Sandy Spring Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed small business loans and HMDA loans reported by the institution from January 1, 2012, through December 31, 2013. The evaluation period for community development lending, investments, and services was May 21, 2012, through July 14, 2014.

Examiners evaluated the bank's performance in its single AA, which included portions of the Washington-Baltimore-Northern Virginia, District of Columbia-Maryland-Virginia-West Virginia, Combined Statistical Area. The bank's AA included all of the Bethesda-Rockville-Fredrick, Maryland, Metropolitan Division and portions of both the Baltimore-Towson, Maryland, Metropolitan Statistical Area ("MSA") and the Washington-Arlington-Alexandria, District of Columbia-Maryland-Virginia-West Virginia, Metropolitan Division. With the exception of Baltimore City and Baltimore County, where Sandy Spring Bank has a limited presence, the AA included all geographic areas of concern to the commenters.

capacity and available opportunities. Examiners noted that the bank's community development lending supported organizations focused on assisting LMI individuals, promoting affordable housing, and financing small businesses.

Examiners determined that Sandy Spring Bank maintained a significant level of qualified community development investments and that its level of responding to community development needs through investment activities was rated High Satisfactory, given the investment opportunities in the bank's AA. Examiners highlighted several investments and/or grants that supported LMI individuals and small businesses within the bank's AA.

Examiners found that the bank's systems for delivering retail banking services and its branch locations were readily accessible to all segments of the AA. Examiners also observed that the bank offered many services with no or minimal service charges, including free mobile and internet banking, free bill pay, free account alerts, no ATM fees, and free checking accounts. Examiners determined that the bank's distribution of branches was adequate, and its record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and/or individuals. While examiners noted certain differences between the hours of the bank's offices in LMI census tracts compared to middle- and upper-income census tracts, examiners determined that, when viewed comprehensively, the bank's services did not vary in a way that inconvenienced communities within its AA, including LMI geographies and/or individuals.

Examiners also found that bank employees had participated in a relatively high level of community development activities. Examiners noted that the bank and its employees provided financial expertise to a number of organizations that provide community development services that target LMI individuals, facilitate small business development, or focus on job creation. Examiners also observed that the bank participated in various community development service activities that served LMI individuals.

Sandy Spring Bank's Activities Since the Sandy Spring Bank Evaluation

Sandy Spring represents that since the Sandy Spring Bank Evaluation, Sandy Spring Bank has furthered its commitment to community reinvestment and serving the needs of LMI geographies and individuals in all of its communities through its home mortgage lending, community service activities, outreach efforts, and investments. Specifically, Sandy Spring represents that Sandy Spring Bank has continued to originate home mortgage loans to LMI borrowers and in LMI census tracts. Sandy Spring represents that Sandy Spring Bank has demonstrated its commitment to flexible and innovative lending through its participation in various affordable housing programs, and has also made a number of community development loans and donations to community organizations. Further, Sandy Spring represents that numerous Sandy Spring Bank employees have continued to serve the bank's communities by volunteering at nonprofit organizations, including organizations focused on providing services targeted to LMI individuals or communities, offering affordable housing opportunities to LMI residents, and providing financial literacy training for youth, young adults, adults, and small business owners.

CRA Performance of WashingtonFirst Bank

WashingtonFirst Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of August 18, 2014 ("WashingtonFirst Bank

Evaluation”).³⁹ WashingtonFirst Bank received “Satisfactory” ratings for both the Lending Test and the Community Development Test.

Examiners found that WashingtonFirst Bank’s loan-to-deposit ratio was reasonable given the bank’s size, financial condition, and AAs’ credit needs. Examiners determined that WashingtonFirst Bank originated a substantial majority of its loans within its AAs. Examiners also found that the geographic distribution of WashingtonFirst Bank’s loans reflected a reasonable dispersion throughout the AAs. According to examiners, the bank’s geographic distribution of small business loans reflected a reasonable dispersion, and its geographic distribution of home mortgage loans reflected an excellent dispersion, throughout the AAs. Examiners also found that WashingtonFirst Bank’s distribution of loans based on borrower profile displayed a reasonable level of penetration and that the bank’s record of lending to businesses of different sizes and individuals of different income levels reflected reasonable performance.

With respect to community development, examiners considered WashingtonFirst Bank’s community development loans, investments, and services. Examiners found that WashingtonFirst Bank demonstrated adequate responsiveness to the community development needs of the Washington MMSA, where the majority of its community development activities occurred, considering the bank’s capacity and the need and availability of opportunities for community development in the AA. Examiners observed that WashingtonFirst Bank’s community development lending was responsive to community credit needs because it supported community development organizations, promoted economic development, and provided affordable housing. Examiners also noted that bank management and employees provided financial advice and assistance to various community development organizations, as well as to LMI individuals and small businesses. Examiners further noted that WashingtonFirst Bank offered various cost-effective services to customers, including free checking, online banking, bill pay, telephone banking, unlimited check writing on consumer checking accounts, overdraft-protection lines of credit, and checking accounts for nonprofit organizations and small businesses.

WashingtonFirst Bank’s Activities Since the WashingtonFirst Bank Evaluation

Sandy Spring represents that since the WashingtonFirst Bank Evaluation, WashingtonFirst Bank has continued to serve its communities through its home mortgage lending, community service activities, outreach efforts, and investments. Sandy Spring represents that WashingtonFirst Bank has continued to originate home mortgage loans to LMI borrowers and in LMI census tracts. Sandy Spring represents that WashingtonFirst Bank has demonstrated its commitment to flexible and innovative lending through its participation in various affordable housing programs. Further, Sandy Spring represents that numerous WashingtonFirst Bank officers and employees have continued to serve the bank’s communities through volunteering and leadership roles at several nonprofit organizations, including supporting organizations that provide services targeted to LMI individuals or communities, serving on boards and committees of nonprofit organizations that offer

³⁹ The WashingtonFirst Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending and community development tests. For the Lending Test, examiners reviewed home mortgage loans reported pursuant to HMDA for 2012 and 2013, and small business loans reported under CRA data collection requirements for 2013. For the Community Development Test, examiners reviewed the bank’s qualified community development lending, investments, and service activities from September 19, 2011, through August 18, 2014.

Examiners evaluated the bank’s performance in the bank’s two AAs, which included portions of the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia, Multistate Metropolitan Statistical Area (“Washington MMSA”), and the Bethesda-Rockville-Fredrick, Maryland, MSA.

affordable housing opportunities to LMI residents, and providing financial literacy training for youth, veterans, small business owners, and older persons.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examinations of Sandy Spring Bank conducted by the Reserve Bank, which included a review of the bank's compliance management program and the bank's compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, the Reserve Bank evaluated Sandy Spring Bank's fair lending management program, including the bank's fair lending-related practices, policies, procedures, and internal controls.

The Board has considered the results of a recent consumer compliance review of WashingtonFirst Bank conducted by the Reserve Bank.⁴⁰ The Board also has considered the results of a compliance examination of WashingtonFirst Bank by the FDIC, which included a review of the bank's compliance management system and compliance with consumer protection laws, including fair lending laws and regulations, and of a fair lending examination of WashingtonFirst Bank, which included a review of lending products and distributions, and underwriting and pricing practices.

The Board has taken the results of these examinations into account in evaluating this proposal, including in considering whether Sandy Spring has the experience and resources to ensure that the combined organization would effectively implement policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Sandy Spring represents that, following the proposed transaction, the combined organization would continue to offer a range of deposit and credit products and services that benefit the communities in which Sandy Spring Bank and WashingtonFirst Bank each presently conduct business, including credit products and services that help fulfill the needs of LMI demographics. Sandy Spring represents that customers of WashingtonFirst Bank would have access to enhanced products and services that are more expansive than those currently available to WashingtonFirst Bank customers, including several additional types of checking accounts, health savings accounts, additional IRA products, trust and fiduciary services, and a full range of personal and business insurance products. In addition, Sandy Spring asserts that customers of both institutions would benefit from a more expansive branch and ATM network. In addition, Sandy Spring represents that the proposed transaction would increase Sandy Spring Bank's lending capacity and lending limits, which would allow Sandy Spring Bank to make more and larger loans. Sandy Spring also asserts that the proposed transaction would facilitate further investments in the bank's technology, marketing, and personnel, which would enable Sandy Spring Bank to provide new services in a cost-effective way, reach more members of its communities, improve its risk-management, and develop and deliver more products and services.

⁴⁰ WashingtonFirst Bank was subject to the FDIC's jurisdiction until January 2017, when it became a state member bank. Prior to the Board's approval of WashingtonFirst Bank's application to become a state member bank, the Reserve Bank conducted a review of WashingtonFirst Bank's policies, procedures, practices, and systems.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the Reserve Bank and FDIC, confidential supervisory information, information provided by Sandy Spring Bank, the public comments on the proposal, and the potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended sections 3 and 4 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's risk "to the stability of the United States banking or financial system."⁴¹

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴² These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴³

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁴

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and

⁴¹ Dodd-Frank Act §§ 604(d), (e) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1828(c)(5), 1842(c)(7), and 1843(j)(2)(A).

⁴² Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

⁴³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁴ See *Peoples United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

commercial banking activities.⁴⁵ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Acquisition of a Nonbanking Company

As noted, Sandy Spring has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire 1st Portfolio, which engages in financial and investment advisory activities that the Board has determined by regulation are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.⁴⁶ In connection with a notice under section 4(c)(8) of the BHC Act, section 4(j)(2) of the BHC Act requires the Board to “consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”⁴⁷

The Board has considered that the proposed transaction would permit Sandy Spring to expand its delivery of wealth advisory and retirement planning services and enable Sandy Spring to provide services in a more cost-effective and efficient manner. The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of the proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Establishment of Branches

Sandy Spring Bank has applied under section 9 of the FRA to establish branches at the current locations of WashingtonFirst Bank.⁴⁸ The Board has assessed the factors it is required to consider when reviewing an application under that section, including Sandy

⁴⁵ Sandy Spring and WashingtonFirst primarily offer a range of retail and commercial banking products and services. Sandy Spring has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

⁴⁶ 12 CFR 225.28(b)(6).

⁴⁷ 12 U.S.C. § 1843(j)(2)(A).

⁴⁸ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Under

Spring Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.⁴⁹ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.⁵⁰ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Sandy Spring and Sandy Spring Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective November 22, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard

Ann E. Misback
Secretary of the Board

section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. *See* 12 U.S.C. §§36(d) and 1831u(d).

⁴⁹ 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Sandy Spring Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

⁵⁰ A commenter requested that the Board hold public hearings on the proposal. The Bank Merger Act and section 9 of the FRA do not require a public meeting or a formal public hearing on an application. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on July 11, 2017, and in the relevant newspaper of general circulation (*The Washington Post*) on June 26, July 3, and July 10, 2017. The comment period ended on August 1, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Appendix

Branches to Be Established by Sandy Spring Bank

1. 4501 North Fairfax Drive, Arlington, Virginia 22203
2. 115 North Washington Street, Alexandria, Virginia 22314
3. 7023 Little River Turnpike, Suite 101, Annandale, Virginia 22003
4. 12735 Shoppes Lane, Fairfax, Virginia 22033
5. 9851 Georgetown Pike, Great Falls, Virginia 22066
6. 13081 Worldgate Drive, Herndon, Virginia 20170
7. 1356 Chain Bridge Road, McLean, Virginia 22101
8. 11636 Plaza America Drive, Reston, Virginia 20190
9. 2095 Chain Bridge Road, Vienna, Virginia 22182
10. 10777 Main Street, Fairfax, Virginia 22030
11. 46901 Cedar Lakes Plaza, Sterling, Virginia 20164
12. 9150 Manassas Drive, Manassas Park, Virginia 20111
13. 1025 Connecticut Avenue, N.W., 1st Floor, District of Columbia 20036
14. 1146 19th Street, N.W., District of Columbia 20036
15. 7708 Woodmont Avenue, Bethesda, Maryland 20814
16. 9812 Falls Road, Suite 125, Potomac, Maryland 20854
17. 14941 Shady Grove Road, Rockville, Maryland 20850
18. 6329 Greenbelt Road, College Park, Maryland 20740
19. 6089 Oxon Hill Road, Oxon Hill, Maryland 20745

Orders Issued Under Bank Merger Act

Sandy Spring Bancorp, Inc.
Olney, Maryland

Order Approving the Merger of Bank Holding Companies, the Acquisition of a Nonbanking Subsidiary, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017–32 (November 22, 2017)

Sandy Spring Bancorp, Inc. (“Sandy Spring”), Olney, Maryland, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with WashingtonFirst Bankshares, Inc. (“WashingtonFirst”), and thereby indirectly acquire WashingtonFirst Bank, both of Reston, Virginia. Sandy Spring has also requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y³ to acquire 1st Portfolio, Inc. (“1st Portfolio”), Fairfax, Virginia, a nonbanking subsidiary of WashingtonFirst that is engaged in financial and investment advisory activities.

In addition, Sandy Spring’s subsidiary state member bank, Sandy Spring Bank, Olney, Maryland, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with WashingtonFirst Bank, with Sandy Spring Bank as the surviving entity.⁴ Sandy Spring Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of WashingtonFirst Bank.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 31973 (July 11, 2017)).⁶ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Sandy Spring, with consolidated assets of approximately \$5.3 billion, is the 201st largest insured depository organization in the United States. Sandy Spring controls approximately \$3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Sandy Spring controls Sandy Spring Bank, which operates in the District of Columbia, Maryland, and Virginia. Sandy Spring is the 27th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$3.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction.⁸ Sandy Spring is the 8th largest insured depository organization in Maryland, controlling deposits

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

⁴ 12 U.S.C. § 1828(c).

⁵ 12 U.S.C. § 321. These locations are listed in the Appendix.

⁶ 12 CFR 262.3(b).

⁷ National asset and deposit data are as of June 30, 2017, unless otherwise noted.

⁸ State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

of approximately \$3.2 billion, which represent approximately 2.3 percent of the total deposits of insured depository institutions in that state. Sandy Spring is the 59th largest insured depository organization in Virginia, controlling deposits of approximately \$329.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

WashingtonFirst, with consolidated assets of approximately \$2.1 billion, is the 383rd largest insured depository organization in the United States. WashingtonFirst controls approximately \$1.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. WashingtonFirst controls WashingtonFirst Bank, which operates in the District of Columbia, Maryland, and Virginia. WashingtonFirst is the 14th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$372.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction. WashingtonFirst is the 62nd largest insured depository organization in Maryland, controlling deposits of approximately \$137.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. WashingtonFirst is the 22nd largest insured depository organization in Virginia, controlling deposits of approximately \$1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Sandy Spring would become the 165th largest insured depository organization in the United States, with consolidated assets of approximately \$7.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sandy Spring would control total deposits of approximately \$5.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sandy Spring would become the 14th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$375.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that jurisdiction. Sandy Spring would remain the 8th largest insured depository organization in Maryland, controlling deposits of approximately \$3.3 billion, which represent approximately 2.4 percent of the total deposits of insured depository institutions in that state. In Virginia, Sandy Spring would become the 18th largest insured depository organization, controlling deposits of \$1.4 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.⁹ Section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.¹⁰ The Board may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1831u(a)(1).

years.¹¹ In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company would upon consummation control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.¹²

For purposes of the BHC Act, the home state of Sandy Spring is Maryland, and WashingtonFirst Bank is located in the District of Columbia, Maryland, and Virginia.¹³ For purposes of section 44 of the FDI Act, the home state of Sandy Spring Bank is Maryland, and the home state of WashingtonFirst Bank is Virginia.¹⁴ Sandy Spring and Sandy Spring Bank are well capitalized and well managed under applicable law, and Sandy Spring Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”). Neither the District of Columbia nor Virginia has statutory minimum age requirements,¹⁵ and WashingtonFirst Bank has been in existence for more than five years.

On consummation of the proposed transaction, Sandy Spring would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Maryland imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹⁶ The combined organization would control approximately 0.8 percent of the total amount of deposits of insured depository institutions in the District of Columbia, approximately 2.4 percent of the total amount of deposits of insured depository institutions in Maryland, and approximately 0.5 percent of the total amount of deposits of insured depository institutions in Virginia, the only states in which Sandy Spring and WashingtonFirst have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including Sandy Spring Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under both statutes.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁷ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to

¹¹ 12 U.S.C. § 1842(d)(1)(B); 12 U.S.C. § 1831u(a)(5).

¹² 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

¹³ *See* 12 U.S.C. § 1841(o)(4). For purposes of the BHC Act, a bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later, and a state bank’s home state is the state in which the bank is chartered.

¹⁴ For purposes of section 44 of the FDI Act, a state bank’s home state is the state in which the bank is chartered. 12 U.S.C. § 1831u(g)(4).

¹⁵ *See* D.C. Code § 26-731 - 741; Va. Code Ann. § 6.2-849 - 859.

¹⁶ Md. Code Ann., Fin. Inst. § 5-1013. The District of Columbia and Virginia do not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹⁷ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹⁸ In addition, as described in more detail below, the Board must consider the competitive effects of a proposal to acquire a nonbank company under the balancing test of section 4(j) of the BHC Act.¹⁹

Sandy Spring and WashingtonFirst have subsidiary depository institutions that compete directly in the Washington, District of Columbia-Maryland-Virginia-West Virginia banking market (“Washington market”).²⁰ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market (“market deposits”) that Sandy Spring would control;²¹ the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²² and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Washington market. On consummation of the proposal, the Washington market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this market would be small, and numerous competitors would remain in the market.²³

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Washington market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

¹⁸ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

¹⁹ 12 U.S.C. § 1843(j)(2)(A).

²⁰ The Washington market includes the District of Columbia; the Maryland counties of Charles, Calvert, Frederick, Montgomery, and Prince George’s; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; the Virginia counties of Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren; the Virginia cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and Jefferson County, West Virginia.

²¹ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

²² Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²³ Sandy Spring operates the 12th largest depository institution in the Washington market, controlling approximately \$3.0 billion in deposits, which represent 1.6 percent of market deposits. WashingtonFirst operates the 16th largest depository institution in the same market, controlling approximately \$1.6 billion in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Sandy Spring would remain the 12th largest depository organization in the market, controlling deposits of approximately \$4.6 billion, which represent 2.4 percent of market deposits. The HHI for the Washington market would increase by 2 points to 998, and 77 competitors would remain in the market.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Washington market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under sections 3 and 4 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁴ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Sandy Spring and WashingtonFirst are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured primarily as an exchange of shares, with a subsequent merger of the subsidiary depository institutions.²⁵ The asset quality, earnings, and liquidity of Sandy Spring Bank and WashingtonFirst Bank are consistent with approval, and Sandy Spring appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Sandy Spring, WashingtonFirst, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sandy Spring; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenters.

²⁴ 12 U.S.C. §§ 1842(c)(2), (5), and (6); 1843(j)(4); 1828(c)(5) and (11).

²⁵ To effect the holding company merger, a wholly owned subsidiary of Sandy Spring formed to facilitate the transaction would merge with WashingtonFirst, with WashingtonFirst as the surviving entity ("First-Step Merger"). At the effective time of the First-Step Merger, each share of WashingtonFirst common stock would be converted into a number of shares of Sandy Spring common stock based on an exchange ratio. Immediately thereafter, WashingtonFirst would merge with Sandy Spring, with Sandy Spring as the surviving entity. WashingtonFirst Bank would then merge with and into Sandy Spring Bank, with Sandy Spring Bank as the surviving entity. As part of the holding company merger, Sandy Spring would acquire 1st Portfolio from WashingtonFirst and immediately thereafter transfer 1st Portfolio to Sandy Spring Bank.

Sandy Spring, WashingtonFirst, and their subsidiary depository institutions are each considered to be well managed. Sandy Spring has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Sandy Spring's directors and senior executive officers have significant knowledge of and experience in the banking and financial services sectors, and Sandy Spring's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Sandy Spring's plans for implementing the proposal. Sandy Spring has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Sandy Spring would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sandy Spring's management has the experience and resources to operate the combined organization in a safe and sound manner.²⁶ Sandy Spring plans to integrate WashingtonFirst's existing management and personnel in a manner that augments Sandy Spring's management.²⁷

Based on all the facts of record, including Sandy Spring's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Sandy Spring and WashingtonFirst in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁸ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community,

²⁶ One commenter asked the Board to consider the diversity of Sandy Spring's management in reviewing the proposed transaction. While the Board encourages all firms to promote diversity in their management and workforce, the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act and Bank Merger Act are limited and specifically defined. *See, e.g., PacWest Bancorp*, 102 *Federal Reserve Bulletin* 82, 88 n. 24 (2015); *CIT Group, Inc.*, 102 *Federal Reserve Bulletin* 1, 7 n. 24 (2015); *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n.31 (2004). *See also Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). Other provisions of law authorize the Board, together with the other federal financial supervisory agencies, to monitor the efforts of regulated entities to promote diversity and inclusion. Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, 80 *Federal Register* 33016 (June 10, 2015). *See* Pub. L. No. 111-203, 124 Stat. 1376, 1541-44 (2010), codified at 12 U.S.C. § 5452.

²⁷ On consummation, WashingtonFirst's president and chief executive officer, as well as the chairman and two additional members of its board of directors, will be appointed to the boards of directors of Sandy Spring and Sandy Spring Bank.

²⁸ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁹ 12 U.S.C. § 2901(b).

including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.³⁰

In addition, the Board considers the banks’ overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution’s business model, its marketing and outreach plans, the organization’s plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Sandy Spring Bank and WashingtonFirst Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Richmond (“Reserve Bank”) and the FDIC; confidential supervisory information; information provided by Sandy Spring; and the public comments received on the proposal.

Public Comments Regarding the Proposal

Three commenters objected to the proposal based on alleged deficiencies in the CRA performance and fair lending record of Sandy Spring Bank.³¹ All three commenters alleged low levels of lending to minority borrowers, and/or in majority-minority areas, in communities served by Sandy Spring Bank, as reflected in data reported under the Home Mortgage Disclosure Act (“HMDA”).³² One commenter alleged high denial rates in 2015 by Sandy Spring Bank to African American applicants and low levels of lending by WashingtonFirst Bank to African American and Hispanic applicants in certain communities. Two commenters criticized Sandy Spring Bank’s lending to LMI individuals and in LMI census tracts, and one such commenter also criticized the bank’s lending levels to small businesses and its levels of community development loans and investments in certain communities. Specific geographic areas of concern for commenters included the District of Columbia; Montgomery County, Maryland; Prince George’s County, Maryland; Baltimore City, Maryland; and Baltimore County, Maryland.

One commenter alleged that the percentages of Sandy Spring Bank’s branch locations in LMI and majority-minority census tracts in Montgomery County, Maryland, and Northern Virginia are inadequate, and that the proposed transaction will not increase the bank’s branching presence in LMI and majority-minority markets. Further, one commenter generally criticized the adequacy of information provided by Sandy Spring Bank regarding potential branch closings that would occur in connection with the proposed transaction.

³⁰ 12 U.S.C. § 2903.

³¹ Two commenters requested that the Board not approve the proposal until Sandy Spring enters into a community benefits plan that outlines how the bank plans to help meet the convenience and needs of the communities it serves. The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. See, e.g., *Huntington Baneshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 at 488 n.18 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas (“AAs”).

³² 12 U.S.C. § 2801 *et seq.*

Businesses of the Involved Institutions and Response to the Comments

Sandy Spring provides a broad range of financial products and services, primarily through Sandy Spring Bank, which operates through a branch network in the District of Columbia, Maryland, and Virginia. Products and services offered by Sandy Spring Bank include retail and commercial banking products and services; consumer, commercial, and mortgage lending; trust and investment services; and insurance services.

WashingtonFirst operates primarily through WashingtonFirst Bank and offers a similar range of retail and commercial products and services through branches located in the District of Columbia, Maryland, and Virginia. WashingtonFirst Bank's products and services include retail and commercial banking products and services; consumer, commercial, and mortgage lending; and financial and investment advisory services.

Sandy Spring denies the commenters' allegations regarding Sandy Spring Bank's CRA and fair lending records and asserts that the bank's record of meeting the convenience and needs of the communities the bank serves is consistent with the criteria for approval of the proposal. Sandy Spring asserts that the allegations based on HMDA data do not fully represent Sandy Spring Bank's lending record. Sandy Spring represents that Sandy Spring Bank has made significant efforts in recent years to serve the credit needs of its communities, including increasing mortgage lending to LMI borrowers and in LMI census tracts. Sandy Spring also states that the bank has taken steps to enhance the delivery of products and services to LMI individuals in its AA, such as hiring mortgage bankers with experience in lending to LMI individuals, expanding and enhancing the role of its CRA and Fair Lending Committee, and adopting a Community Development and Fair Lending Implementation Plan ("Implementation Plan") containing priorities, goals, and initiatives for home mortgage, small business, and community development lending, among other areas. Sandy Spring represents that initiatives being undertaken under the plan include enhancement of products that serve LMI communities, hiring mortgage bankers and CRA specialists to originate loans in LMI communities, and outreach to educate mortgage bankers about CRA products.

Sandy Spring represents that Sandy Spring Bank's small business lending has increased in dollar amount since its last CRA performance evaluation. Moreover, Sandy Spring represents that in 2016, Sandy Spring Bank exceeded peers in small business lending in LMI census tracts within its AA and in high minority census tracts in several counties. Sandy Spring also represents that its Implementation Plan includes initiatives related to small business lending, including proactive outreach to prospective and existing business clients in LMI communities. Further, Sandy Spring denies a commenter's allegations regarding its levels of community development lending and investments and represents that its community development loans and investments have significantly increased since its last CRA performance evaluation.

Sandy Spring also asserts that it maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations. Sandy Spring contends that it has comprehensive policies and procedures that ensure both safe and sound lending and equal access to credit for creditworthy applicants, including ongoing fair lending training, internal fair lending and CRA audits, and annual assessments of underwriting and pricing decisions. Sandy Spring represents that the denial rates that a commenter referenced reflect determinations based on applicants' credit history, existing debt levels, and other non-discriminatory factors.

Sandy Spring represents that Sandy Spring Bank has a comprehensive branching strategy and procedures for determining its branch locations, and a key component of its decisions

to open or close branches is the demographics of the census tract in which the branch is located and the census tracts surrounding the branch location. Moreover, Sandy Spring asserts that with each branch decision, the overall network of branching and availability of services are considered from a CRA perspective to ensure that banking needs are met for a diversified population without exclusion. Sandy Spring represents that Sandy Spring Bank has not specifically identified branches that it intends to close in connection with the proposed transaction, but will evaluate its continued coverage in LMI and high minority census tracts as important factors when considering branch consolidation.³³

Sandy Spring denies one commenter's allegations that WashingtonFirst Bank engages in discriminatory lending practices. Sandy Spring asserts that the allegations based on HMDA data do not fully represent WashingtonFirst Bank's lending record. Sandy Spring asserts that WashingtonFirst maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations and has comprehensive policies and procedures that ensure both safe and sound lending and equal access to credit for creditworthy applicants, such as ongoing fair lending training and internal fair lending and CRA audits.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.³⁴ In this case, the Board considered the views of the Reserve Bank and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors,

³³ Sandy Spring also represents that once Sandy Spring Bank determines which branches it will close, it will comply with its branch closure policy and will follow all applicable regulations with respect to notice of branch closures. The Board notes that section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

³⁴ See *Interagency Questions and Answers Regarding Community Reinvestment*, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³⁵ 12 U.S.C. § 2906.

including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁶ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.³⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Sandy Spring Bank

Sandy Spring Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of July 14, 2014 ("Sandy Spring Bank Evaluation").³⁸ The bank received a "Low Satisfactory" rating for the Lending Test, and "High Satisfactory" ratings for each of the Investment and the Service Tests.

Examiners concluded that, overall, the bank's lending activity was consistent with the bank's capacity and market presence. Examiners noted that a substantial majority of the bank's HMDA and small business loans were originated within the bank's AA. Examiners found that the bank's geographic lending distribution performance ranged from poor to good by loan product and year, but found the bank's geographic distribution performance to be adequate overall. Examiners also found that, overall, Sandy Spring Bank's distribution of loans by borrower income and revenue size of business was adequate. Examiners explained that this conclusion was based on findings that the bank's distribution of HMDA loans to borrowers of different income levels was adequate and its distribution of loans to businesses of different revenue sizes was good, and that greater weight was given to the bank's HMDA lending performance. Examiners also determined that Sandy Spring Bank's community development lending activity was adequate, considering the bank's

³⁶ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

³⁷ Other information relevant to credit decisions could include credit history, debt-to-income ratio, and loan-to-value ratio. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³⁸ The Sandy Spring Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed small business loans and HMDA loans reported by the institution from January 1, 2012, through December 31, 2013. The evaluation period for community development lending, investments, and services was May 21, 2012, through July 14, 2014.

Examiners evaluated the bank's performance in its single AA, which included portions of the Washington-Baltimore-Northern Virginia, District of Columbia-Maryland-Virginia-West Virginia, Combined Statistical Area. The bank's AA included all of the Bethesda-Rockville-Fredrick, Maryland, Metropolitan Division and portions of both the Baltimore-Towson, Maryland, Metropolitan Statistical Area ("MSA") and the Washington-Arlington-Alexandria, District of Columbia-Maryland-Virginia-West Virginia, Metropolitan Division. With the exception of Baltimore City and Baltimore County, where Sandy Spring Bank has a limited presence, the AA included all geographic areas of concern to the commenters.

capacity and available opportunities. Examiners noted that the bank's community development lending supported organizations focused on assisting LMI individuals, promoting affordable housing, and financing small businesses.

Examiners determined that Sandy Spring Bank maintained a significant level of qualified community development investments and that its level of responding to community development needs through investment activities was rated High Satisfactory, given the investment opportunities in the bank's AA. Examiners highlighted several investments and/or grants that supported LMI individuals and small businesses within the bank's AA.

Examiners found that the bank's systems for delivering retail banking services and its branch locations were readily accessible to all segments of the AA. Examiners also observed that the bank offered many services with no or minimal service charges, including free mobile and internet banking, free bill pay, free account alerts, no ATM fees, and free checking accounts. Examiners determined that the bank's distribution of branches was adequate, and its record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and/or individuals. While examiners noted certain differences between the hours of the bank's offices in LMI census tracts compared to middle- and upper-income census tracts, examiners determined that, when viewed comprehensively, the bank's services did not vary in a way that inconvenienced communities within its AA, including LMI geographies and/or individuals.

Examiners also found that bank employees had participated in a relatively high level of community development activities. Examiners noted that the bank and its employees provided financial expertise to a number of organizations that provide community development services that target LMI individuals, facilitate small business development, or focus on job creation. Examiners also observed that the bank participated in various community development service activities that served LMI individuals.

Sandy Spring Bank's Activities Since the Sandy Spring Bank Evaluation

Sandy Spring represents that since the Sandy Spring Bank Evaluation, Sandy Spring Bank has furthered its commitment to community reinvestment and serving the needs of LMI geographies and individuals in all of its communities through its home mortgage lending, community service activities, outreach efforts, and investments. Specifically, Sandy Spring represents that Sandy Spring Bank has continued to originate home mortgage loans to LMI borrowers and in LMI census tracts. Sandy Spring represents that Sandy Spring Bank has demonstrated its commitment to flexible and innovative lending through its participation in various affordable housing programs, and has also made a number of community development loans and donations to community organizations. Further, Sandy Spring represents that numerous Sandy Spring Bank employees have continued to serve the bank's communities by volunteering at nonprofit organizations, including organizations focused on providing services targeted to LMI individuals or communities, offering affordable housing opportunities to LMI residents, and providing financial literacy training for youth, young adults, adults, and small business owners.

CRA Performance of WashingtonFirst Bank

WashingtonFirst Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of August 18, 2014 ("WashingtonFirst Bank

Evaluation”).³⁹ WashingtonFirst Bank received “Satisfactory” ratings for both the Lending Test and the Community Development Test.

Examiners found that WashingtonFirst Bank’s loan-to-deposit ratio was reasonable given the bank’s size, financial condition, and AAs’ credit needs. Examiners determined that WashingtonFirst Bank originated a substantial majority of its loans within its AAs. Examiners also found that the geographic distribution of WashingtonFirst Bank’s loans reflected a reasonable dispersion throughout the AAs. According to examiners, the bank’s geographic distribution of small business loans reflected a reasonable dispersion, and its geographic distribution of home mortgage loans reflected an excellent dispersion, throughout the AAs. Examiners also found that WashingtonFirst Bank’s distribution of loans based on borrower profile displayed a reasonable level of penetration and that the bank’s record of lending to businesses of different sizes and individuals of different income levels reflected reasonable performance.

With respect to community development, examiners considered WashingtonFirst Bank’s community development loans, investments, and services. Examiners found that WashingtonFirst Bank demonstrated adequate responsiveness to the community development needs of the Washington MMSA, where the majority of its community development activities occurred, considering the bank’s capacity and the need and availability of opportunities for community development in the AA. Examiners observed that WashingtonFirst Bank’s community development lending was responsive to community credit needs because it supported community development organizations, promoted economic development, and provided affordable housing. Examiners also noted that bank management and employees provided financial advice and assistance to various community development organizations, as well as to LMI individuals and small businesses. Examiners further noted that WashingtonFirst Bank offered various cost-effective services to customers, including free checking, online banking, bill pay, telephone banking, unlimited check writing on consumer checking accounts, overdraft-protection lines of credit, and checking accounts for nonprofit organizations and small businesses.

WashingtonFirst Bank’s Activities Since the WashingtonFirst Bank Evaluation

Sandy Spring represents that since the WashingtonFirst Bank Evaluation, WashingtonFirst Bank has continued to serve its communities through its home mortgage lending, community service activities, outreach efforts, and investments. Sandy Spring represents that WashingtonFirst Bank has continued to originate home mortgage loans to LMI borrowers and in LMI census tracts. Sandy Spring represents that WashingtonFirst Bank has demonstrated its commitment to flexible and innovative lending through its participation in various affordable housing programs. Further, Sandy Spring represents that numerous WashingtonFirst Bank officers and employees have continued to serve the bank’s communities through volunteering and leadership roles at several nonprofit organizations, including supporting organizations that provide services targeted to LMI individuals or communities, serving on boards and committees of nonprofit organizations that offer

³⁹ The WashingtonFirst Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending and community development tests. For the Lending Test, examiners reviewed home mortgage loans reported pursuant to HMDA for 2012 and 2013, and small business loans reported under CRA data collection requirements for 2013. For the Community Development Test, examiners reviewed the bank’s qualified community development lending, investments, and service activities from September 19, 2011, through August 18, 2014.

Examiners evaluated the bank’s performance in the bank’s two AAs, which included portions of the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia, Multistate Metropolitan Statistical Area (“Washington MMSA”), and the Bethesda-Rockville-Fredrick, Maryland, MSA.

affordable housing opportunities to LMI residents, and providing financial literacy training for youth, veterans, small business owners, and older persons.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examinations of Sandy Spring Bank conducted by the Reserve Bank, which included a review of the bank's compliance management program and the bank's compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, the Reserve Bank evaluated Sandy Spring Bank's fair lending management program, including the bank's fair lending-related practices, policies, procedures, and internal controls.

The Board has considered the results of a recent consumer compliance review of WashingtonFirst Bank conducted by the Reserve Bank.⁴⁰ The Board also has considered the results of a compliance examination of WashingtonFirst Bank by the FDIC, which included a review of the bank's compliance management system and compliance with consumer protection laws, including fair lending laws and regulations, and of a fair lending examination of WashingtonFirst Bank, which included a review of lending products and distributions, and underwriting and pricing practices.

The Board has taken the results of these examinations into account in evaluating this proposal, including in considering whether Sandy Spring has the experience and resources to ensure that the combined organization would effectively implement policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Sandy Spring represents that, following the proposed transaction, the combined organization would continue to offer a range of deposit and credit products and services that benefit the communities in which Sandy Spring Bank and WashingtonFirst Bank each presently conduct business, including credit products and services that help fulfill the needs of LMI demographics. Sandy Spring represents that customers of WashingtonFirst Bank would have access to enhanced products and services that are more expansive than those currently available to WashingtonFirst Bank customers, including several additional types of checking accounts, health savings accounts, additional IRA products, trust and fiduciary services, and a full range of personal and business insurance products. In addition, Sandy Spring asserts that customers of both institutions would benefit from a more expansive branch and ATM network. In addition, Sandy Spring represents that the proposed transaction would increase Sandy Spring Bank's lending capacity and lending limits, which would allow Sandy Spring Bank to make more and larger loans. Sandy Spring also asserts that the proposed transaction would facilitate further investments in the bank's technology, marketing, and personnel, which would enable Sandy Spring Bank to provide new services in a cost-effective way, reach more members of its communities, improve its risk-management, and develop and deliver more products and services.

⁴⁰ WashingtonFirst Bank was subject to the FDIC's jurisdiction until January 2017, when it became a state member bank. Prior to the Board's approval of WashingtonFirst Bank's application to become a state member bank, the Reserve Bank conducted a review of WashingtonFirst Bank's policies, procedures, practices, and systems.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the Reserve Bank and FDIC, confidential supervisory information, information provided by Sandy Spring Bank, the public comments on the proposal, and the potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended sections 3 and 4 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's risk "to the stability of the United States banking or financial system."⁴¹

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴² These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴³

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁴

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and

⁴¹ Dodd-Frank Act §§ 604(d), (e) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1828(c)(5), 1842(c)(7), and 1843(j)(2)(A).

⁴² Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

⁴³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁴ See *Peoples United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

commercial banking activities.⁴⁵ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Acquisition of a Nonbanking Company

As noted, Sandy Spring has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to acquire 1st Portfolio, which engages in financial and investment advisory activities that the Board has determined by regulation are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.⁴⁶ In connection with a notice under section 4(c)(8) of the BHC Act, section 4(j)(2) of the BHC Act requires the Board to “consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”⁴⁷

The Board has considered that the proposed transaction would permit Sandy Spring to expand its delivery of wealth advisory and retirement planning services and enable Sandy Spring to provide services in a more cost-effective and efficient manner. The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of the proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Establishment of Branches

Sandy Spring Bank has applied under section 9 of the FRA to establish branches at the current locations of WashingtonFirst Bank.⁴⁸ The Board has assessed the factors it is required to consider when reviewing an application under that section, including Sandy

⁴⁵ Sandy Spring and WashingtonFirst primarily offer a range of retail and commercial banking products and services. Sandy Spring has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

⁴⁶ 12 CFR 225.28(b)(6).

⁴⁷ 12 U.S.C. § 1843(j)(2)(A).

⁴⁸ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Under

Spring Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.⁴⁹ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.⁵⁰ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Sandy Spring and Sandy Spring Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective November 22, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard

Ann E. Misback
Secretary of the Board

section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. *See* 12 U.S.C. §§36(d) and 1831u(d).

⁴⁹ 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Sandy Spring Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

⁵⁰ A commenter requested that the Board hold public hearings on the proposal. The Bank Merger Act and section 9 of the FRA do not require a public meeting or a formal public hearing on an application. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on July 11, 2017, and in the relevant newspaper of general circulation (*The Washington Post*) on June 26, July 3, and July 10, 2017. The comment period ended on August 1, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Appendix

Branches to Be Established by Sandy Spring Bank

1. 4501 North Fairfax Drive, Arlington, Virginia 22203
2. 115 North Washington Street, Alexandria, Virginia 22314
3. 7023 Little River Turnpike, Suite 101, Annandale, Virginia 22003
4. 12735 Shoppes Lane, Fairfax, Virginia 22033
5. 9851 Georgetown Pike, Great Falls, Virginia 22066
6. 13081 Worldgate Drive, Herndon, Virginia 20170
7. 1356 Chain Bridge Road, McLean, Virginia 22101
8. 11636 Plaza America Drive, Reston, Virginia 20190
9. 2095 Chain Bridge Road, Vienna, Virginia 22182
10. 10777 Main Street, Fairfax, Virginia 22030
11. 46901 Cedar Lakes Plaza, Sterling, Virginia 20164
12. 9150 Manassas Drive, Manassas Park, Virginia 20111
13. 1025 Connecticut Avenue, N.W., 1st Floor, District of Columbia 20036
14. 1146 19th Street, N.W., District of Columbia 20036
15. 7708 Woodmont Avenue, Bethesda, Maryland 20814
16. 9812 Falls Road, Suite 125, Potomac, Maryland 20854
17. 14941 Shady Grove Road, Rockville, Maryland 20850
18. 6329 Greenbelt Road, College Park, Maryland 20740
19. 6089 Oxon Hill Road, Oxon Hill, Maryland 20745

National Bank Holdings Corporation Greenwood Village, Colorado

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-34 (November 28, 2017)

National Bank Holdings Corporation (“NBH”), Greenwood Village, Colorado, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Peoples, Inc. (“Peoples”), Lawrence, Kansas, and thereby indirectly acquire Peoples Bank, Lawrence, Kansas, and Peoples National Bank (“PNB”), Colorado Springs, Colorado.

In addition, NBH’s subsidiary state member bank, NBH Bank (together with NBH, “Applicants”), Greenwood Village, Colorado, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Peoples Bank and PNB, with NBH Bank as the surviving entity.³ NBH Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main offices and branches of Peoples Bank and PNB.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 37589 (August 11, 2017)).⁵ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

NBH, with consolidated assets of approximately \$4.7 billion, is the 212th largest insured depository organization in the United States. NBH controls approximately \$3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ NBH controls NBH Bank, which operates in Colorado, Kansas, Missouri, and Texas. NBH is the 25th largest insured depository organization in Kansas, controlling deposits of approximately \$574.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷ NBH is the 15th largest insured depository organization in Colorado, controlling deposits of approximately \$1.5 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

Peoples, with consolidated assets of approximately \$924.3 million, is the 796th largest insured depository organization in the United States.⁸ Peoples controls approximately

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. In addition, NBH Bank has applied under section 9 of the FRA to establish branches at certain locations of Peoples Bank that currently only provide limited services. The locations of all of the branches to be established are listed in the Appendix.

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

⁷ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

⁸ The Winter Trust of 12/3/74 (“Winter Trust”), Lawrence, Kansas, is a registered bank holding company that controls Peoples. After consummation of the proposed transaction, the Winter Trust is expected to deregister as a bank holding company.

\$724.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Peoples controls Peoples Bank, which operates in Kansas and New Mexico, and PNB, which operates in Colorado. Peoples is the 69th largest insured depository organization in Kansas, controlling deposits of approximately \$220.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Peoples is the 42nd largest insured depository organization in Colorado, controlling deposits of approximately \$265.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, NBH would become the 192nd largest insured depository organization in the United States, with consolidated assets of approximately \$5.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. NBH would control consolidated deposits of approximately \$4.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Kansas, NBH would become the 14th largest insured depository organization, controlling deposits of approximately \$794.5 million, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state. In Colorado, NBH would become the 14th largest insured depository organization, controlling deposits of approximately \$1.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁹ Section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.¹⁰ The Board may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.¹¹ In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping operations.¹²

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1831u(a)(1).

¹¹ 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

¹² 12 U.S.C. § 1842(d)(2)(A) & (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

For purposes of the BHC Act, the home state of NBH is Missouri, Peoples Bank is located in Kansas and New Mexico, and PNB is located in Colorado.¹³ For purposes of section 44 of the FDI Act, the home state of NBH Bank is Colorado, and the home states of Peoples Bank and PNB are Kansas and Colorado, respectively.¹⁴ NBH and NBH Bank are well capitalized and well managed under applicable law, and NBH Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹⁵ Kansas has a five-year minimum age requirement and there are no minimum age requirements under the laws of Colorado or New Mexico that would apply to the proposal.¹⁶ Peoples Bank and PNB have each been in existence for more than 5 years.

On consummation of the proposed transaction, NBH would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Each of Kansas, Colorado, and New Mexico imposes a limit on the total amount of in-state deposits that a single banking organization may control. Specifically, Kansas imposes a 15 percent deposit limit, Colorado imposes a 25 percent deposit limit, and New Mexico imposes a 40 percent deposit limit.¹⁷ The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Kansas, approximately 1.4 percent of the total amount of deposits of insured depository institutions in Colorado, and less than 1 percent of the total amount of deposits of insured depository institutions in New Mexico. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including NBH Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under both statutes.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁸ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁹

NBH and Peoples have subsidiary depository institutions that compete directly in the Colorado Springs, Colorado, banking market (“Colorado Springs market”) and the Kansas City, Missouri, banking market (“Kansas City market”).²⁰ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the

¹³ See 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank’s home state is the state in which the bank is chartered.

¹⁴ For purposes of section 44 of the FDI Act, a state bank’s home state is the state in which the bank is chartered, and a national bank’s home state is the state in which the main office of the bank is located. 12 U.S.C. § 1831u(g)(4).

¹⁵ 12 U.S.C. § 2901 *et seq.*

¹⁶ See Kan. Stat. Ann. § 9-541.

¹⁷ See Kan. Stat. Ann. § 9-520; Colo. Rev. Stat. § 11-104-202(4); N.M. Stat. Ann. § 58-1C-5(B).

¹⁸ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

¹⁹ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

²⁰ The Colorado Springs market includes the Colorado Springs, Colorado, Ranally Metropolitan Area (“RMA”), and the non-RMA portions of El Paso and Teller counties, both of Colorado. The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden, and Kingsville in Johnson County,

Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits of insured depository institutions in the markets (“market deposits”) that NBH would control;²¹ the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²² and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Colorado Springs and Kansas City markets. On consummation of the proposal, the Colorado Springs market would remain moderately concentrated and the Kansas City market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.²³

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Colorado Springs or Kansas City markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Missouri; the towns of Adrian, Amsterdam, and Butler in Bates County, Missouri; Franklin, Johnson, Leavenworth, Miami, and Wyandotte counties, all of Kansas; and Linn County, Kansas (excluding the towns of Blue Mound and Prescott).

²¹ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

²² Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²³ NBH operates the 36th largest depository institution in the Colorado Springs market, controlling approximately \$18.1 million in deposits, which represent approximately 0.2 percent of market deposits. Peoples operates the 8th largest depository institution in the same market, controlling deposits of approximately \$211.4 million, which represent approximately 2.8 percent of market deposits. On consummation of the proposed transaction, NBH would become the 8th largest depository organization in the market, controlling deposits of approximately \$229.4 million, which represent approximately 3 percent of market deposits. The HHI for the Colorado Springs market would increase by 2 points to 1068, and 38 competitors would remain in the market.

NBH operates the 6th largest depository institution in the Kansas City market, controlling approximately \$1.6 billion in deposits, which represent approximately 3.2 percent of market deposits. Peoples operates the 34th largest depository institution in the same market, controlling deposits of approximately \$174.5 million, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, NBH would remain the 6th largest depository organization in the market, controlling deposits of approximately \$1.7 billion, which represent approximately 3.5 percent of market deposits. The HHI for the Kansas City market would increase by 3 points to 847, and 115 competitors would remain in the market.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁴ In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

NBH and NBH Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with subsequent mergers of Peoples Bank and PNB with and into NBH Bank.²⁵ The asset quality, earnings, and liquidity of NBH Bank, Peoples Bank, and PNB are each consistent with approval, and NBH appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of NBH, Peoples, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by NBH, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

NBH and its subsidiary depository institution are each considered to be well managed. NBH has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. NBH's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and NBH's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered NBH's plans for implementing the proposal. NBH has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. NBH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, NBH's management has the experience and resources to operate the combined

²⁴ 12 U.S.C. §§ 1842(c)(2), (5) & (6), and 1828(c)(5) & (11).

²⁵ To effect the transaction, each share of Peoples common stock would be converted into a right to receive cash and NBH common stock, based on an exchange ratio. NBH has the financial resources to effect the proposed transaction.

organization in a safe and sound manner, and NBH plans to integrate the existing management and personnel of Peoples in a manner that augments NBH's management.²⁶

Based on all the facts of record, including NBH's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of NBH and Peoples in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁷ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.²⁸ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.³⁰

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of NBH Bank, Peoples Bank, and PNB; the compliance records of each bank; the supervisory views of the Federal Reserve Bank of Kansas City ("Reserve Bank"); confidential supervisory information; and information provided by NBH.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as infor-

²⁶ Following consummation of the proposed transaction, certain officers and employees of Peoples Bank and PNB will join NBH Bank.

²⁷ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁸ 12 U.S.C. § 2901 *et seq.*

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

mation and views provided by the appropriate federal supervisors.³¹ In this case, the Board considered the views of the Reserve Bank.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³² An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),³³ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁴ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of NBH Bank

NBH Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of December 5, 2016 ("NBH Bank Evaluation").³⁵ The bank received an "Outstanding" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.³⁶ Examiners found that NBH

³¹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³² 12 U.S.C. § 2906.

³³ 12 U.S.C. § 2801 *et seq.*

³⁴ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

³⁵ The NBH Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, business, and farm loans, as well as community development activities (loans, investments, and services), from January 1, 2011, through December 31, 2015.

³⁶ The NBH Bank Evaluation included full-scope evaluations in the Kansas City, Combined Statistical Area; Denver, Colorado Metropolitan Statistical Area ("MSA"); Rural Colorado AA; Northwest Rural Missouri AA; and the Dallas, Texas Metropolitan Division. Limited scope evaluations were performed in the Colorado Springs, Colorado MSA; Fort Collins, Colorado MSA; Greeley, Colorado MSA; Pueblo, Colorado MSA; Grand Junction, Colorado MSA; North Central Rural Missouri AA; Northeast Rural Missouri AA; and Austin, Texas MSA.

Bank's overall lending activity reflected good responsiveness to the credit needs of its AAs. Examiners found that the bank originated a substantial majority of its HMDA, business, and farm loans within its AAs and that the geographic distribution of the bank's HMDA, business, and farm loans was good. In addition, examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses and farms of different sizes. Examiners noted that NBH Bank was a leader in making loans that revitalized and stabilized LMI geographies, as well as loans for economic development.

Examiners determined that NBH Bank demonstrated an adequate responsiveness to the community development needs of its AAs through investments and service activity. Examiners found that the bank's community development investments primarily consisted of mortgage-backed securities comprised of loans to LMI borrowers or secured by a residential mortgage within an LMI census tract. In addition, examiners found that the bank's products, services, and business hours did not vary in a way that inconvenienced customers in its AAs, particularly those in LMI geographies and individuals.

CRA Performance of Peoples Bank

Peoples Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 6, 2012 ("Peoples Bank Evaluation").³⁷ The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test.³⁸

Examiners found that Peoples Bank's average net loan-to-deposit ratio, which is a measure of the overall level of lending, was more than reasonable given the bank's size and financial condition and the credit needs of the bank's AAs. Examiners also found that a majority of the bank's home purchase, home improvement, and business loans were originated within the bank's AAs and that the geographic and borrower distribution of loans reflected reasonable penetration throughout the bank's AAs.

Examiners noted that Peoples Bank's community development performance, which included loans, donations, and services, demonstrated adequate responsiveness to community development needs throughout its AAs. The bank was found to have performed service activities for various organizations, particularly those providing community services targeted to LMI individuals or families.

CRA Performance of PNB

PNB was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 6, 2011 ("PNB Evaluation").³⁹ Examiners found that PNB's loan-to-deposit ratio was excellent, given area competition and the credit needs of the community. Examiners also found that the majority of the bank's loans by number and dollar amount were originated within its AA

³⁷ The Peoples Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. Examiners reviewed HMDA loans from 2010 and 2011 and business loans from a six-month period that ended June 12, 2012. Examiners also reviewed community development activities (loans, investments, and services), from June 21, 2010, through August 6, 2012.

³⁸ The Peoples Bank Evaluation included full-scope evaluations in the Kansas City, Missouri-Kansas MSA, and the Albuquerque, New Mexico MSA. Limited scope evaluations were performed in the Lawrence, Kansas MSA and Non-Metropolitan, Taos County, New Mexico Non-MSA.

³⁹ The PNB Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed commercial real estate loans from January 2006 through May 2011, and HMDA loans from January 1, 2010, through March 31, 2011. The PNB Evaluation included a full-scope review of the bank's AA, the El Paso County, Colorado MSA.

and its overall lending to borrowers of different incomes and to small businesses was reasonable. Examiners determined that the bank's lending to small businesses was excellent and noted that the bank's distribution of loans to small businesses exceeded the demographic comparator.

Examiners found that the geographic distribution of PNB's residential real estate loans reflected reasonable dispersion throughout the geographies for different income levels. Examiners also found that the geographic distribution of PNB's business loans within the bank's AA was excellent.

Additional Convenience and Needs Considerations

The Board has entered into a Consent Order with Peoples Bank with respect to deceptive practices in violation of section 5 of the Federal Trade Commission Act,⁴⁰ which were centered in Peoples Bank's national mortgage business line. This business line, which is separate and apart from the Bank's community banking operations, is being terminated and is not being assumed by NBH as part of this proposal. Pursuant to the Consent Order, Peoples Bank has agreed to pay restitution to affected customers and to set aside at least \$2.8 million for this purpose. Because NBH is not a party to the Consent Order, this order is conditioned on NBH's commitment to cause NBH Bank to comply with Peoples Bank's restitution and related Consent Order obligations.

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. NBH represents that it does not have any plans to discontinue any product or service currently offered by Peoples Bank or PNB. NBH represents that, following the proposed transaction, its customers would gain access to products and services not currently offered by NBH Bank, including wealth and investment services through a third-party broker-dealer relationship and health savings accounts and payroll services through another third-party relationship. In addition, NBH represents that the proposed transaction would provide expanded product capabilities to customers of Peoples Bank and PNB, including access to NBH Bank's credit card offerings, a merchant-funded debit card cash back program, and various online banking features, such as wire transfers, person-to-person payments, and personal financial management tools. In addition, NBH represents that customers of NBH and Peoples would benefit from a larger branch and ATM network.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with consumer protection laws, confidential supervisory information, information provided by NBH, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to

⁴⁰ 15 U.S.C. § 45.

consider a proposal’s “risk to the stability of the United States banking or financial system.”⁴¹

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴² These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴³

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁴

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.⁴⁵ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

⁴¹ Dodd-Frank Act §§ 604(d) & (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

⁴² Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

⁴³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁴ See *Peoples United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

⁴⁵ NBH offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Peoples also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, NBH has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

Establishment of Branches

NBH Bank has applied under section 9 of the FRA to establish branches at the current locations of Peoples Bank and PNB.⁴⁶ The Board has assessed the factors it is required to consider when reviewing an application under that section.⁴⁷ Specifically, the Board has considered NBH Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective November 28, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

⁴⁶ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2) & (c). In addition, under section 44 of the FDI Act, a bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, NBH Bank's branches would be permissible under applicable state law. See Kan. Stat. Ann. § 9-1111(b); Colo. Rev. Stat. §§ 11-105-602 and 603; N.M. Stat. Ann. § 58-5-2.

⁴⁷ 12 U.S.C. § 322; 12 CFR 208.6.

Appendix**Branches to Be Established by NBH Bank**

1. 745 New Hampshire Street, Lawrence, Kansas 66044
2. 4831 West 6th Street, Lawrence, Kansas 66049
3. 1506 South Main Street, Ottawa, Kansas 66067
4. 434 South Main Street, Ottawa, Kansas 66067
5. 7579 West 151st Street, Overland Park, Kansas 66223
6. 3045 Iowa Street, Lawrence, Kansas 66046
7. 212 South Broadway Street, Louisburg, Kansas 66053
8. 13180 Metcalf Avenue, Overland Park, Kansas 66213
9. 5 Supermarket Road, Questa, New Mexico 87556
10. 121 East Main Street, Red River, New Mexico 87558
11. 710 Paseo Del Pueblo Sur, Suite A, Taos, New Mexico 87571
12. 219 Paseo Del Pueblo Norte, Taos, New Mexico 87571
13. 2155 Louisiana Boulevard Northeast, Suite 1000, Albuquerque, New Mexico, 87110
14. 1356 Paseo Del Pueblo Sur, Taos, New Mexico 87571
15. 19 North Tejon, Suite 100, Colorado Springs, Colorado 80903
16. 5175 North Academy Boulevard, Colorado Springs, Colorado 80918
17. 13725 Struthers Road, Suite 200, Colorado Springs, Colorado 80921
18. 400 Harrison Avenue, Leadville, Colorado 80461
19. 1899 Woodmoor Drive, Monument, Colorado 80132
20. 651 Scott Avenue, Woodland Park, Colorado 80863

Robertson Holding Company, L.P.
Harrogate, Tennessee

Unified Shares, LLC
Harrogate, Tennessee

Commercial Bancgroup, Inc.
Harrogate, Tennessee

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, the Establishment of Branches, and Determination on Financial Holding Company Elections
FRB Order No. 2017-36 (December 15, 2017)

Commercial Bancgroup, Inc., and its parent companies, Robertson Holding Company, L.P., and Unified Shares, LLC, all of Harrogate, Tennessee (collectively, “Commercial”), all bank holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ have requested the Board’s approval under section 3 of the BHC Act² for Commercial Bancgroup, Inc. to merge with Citizens Bancorp, Inc. (“Citizens”), and thereby indirectly acquire Citizens’ subsidiary bank, Citizens Bank, both of New Tazewell, Tennessee.

In addition, Commercial’s subsidiary state member bank, Commercial Bank, Harrogate, Tennessee, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Citizens Bank, with Commercial Bank as the surviving entity.³ Commercial Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Citizens Bank.⁴ Robertson Holding Company, L.P., and Unified Shares, LLC, have filed with the Board elections to become financial holding companies pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 44183 (September 21, 2017)).⁶ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Commercial is the 784th largest insured depository organization in the United States. Commercial controls approximately \$760.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Commercial controls Commercial Bank, which operates in Tennessee and Kentucky. Commercial is the 42nd largest insured depository organization in

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These branch locations are listed in the Appendix.

⁵ 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

⁶ 12 CFR 262.3(b).

⁷ National deposit, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

Tennessee, controlling approximately \$536.2 million in deposits, which represent approximately 0.4 percent of the total deposits of insured depository institutions in that state.⁸

Citizens is the 3001st largest insured depository organization in the United States. Citizens controls approximately \$179.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Citizens controls Citizens Bank, which operates in Tennessee.⁹ Citizens is the 115th largest insured depository organization in Tennessee, controlling approximately \$146.9 million in deposits, which represent approximately 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Commercial would become the 635th largest insured depository organization in the United States, with consolidated assets of approximately \$1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Commercial would control consolidated deposits of approximately \$939.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, Commercial would become the 31st largest insured depository organization, controlling deposits of approximately \$683.1 million, which represent approximately 0.5 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁰ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹¹

Commercial and Citizens have subsidiary depository institutions that compete directly in the Middlesboro Area, KY-TN-VA banking market (“Middlesboro market”).¹² The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market (“market deposits”) that Commercial would control;¹³ the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁴ and other characteristics of the Middlesboro market.

⁸ State deposit, market share, and ranking data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁹ The proposal does not raise interstate issues under section 3(d) of the BHC Act because Tennessee is the home state of both Commercial and Citizens Bank, and Citizens Bank operates only in Tennessee. *See* 12 U.S.C. § 1842(d).

¹⁰ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

¹¹ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

¹² The Middlesboro market is defined as Bell County, Kentucky, and Claiborne County, Tennessee; plus the towns of Rose Hill and Ewing in Lee County, Virginia.

¹³ Local deposit and market share data are as of June 30, 2017.

¹⁴ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating

The competitive effects of the proposal in the Middlesboro market warrant a detailed review because the proposal would result in a concentration level that would exceed the thresholds in the DOJ Bank Merger Guidelines and would result in the market deposit share of Commercial exceeding 35 percent when using initial competitive screening data. Commercial is the largest competitor in the Middlesboro market, controlling approximately \$281.6 million in deposits, which represent approximately 22.7 percent of market deposits. Citizens is the fifth largest depository organization in the Middlesboro market, controlling approximately \$110.9 million in deposits, which represent approximately 12.6 percent of market deposits. On consummation of the proposal, Commercial would remain the largest depository organization in the Middlesboro market, controlling approximately \$392.5 million in market deposits, which would represent approximately 35.3 percent of market deposits. The HHI in this market would increase by 571 points, from 1626 to 2197.

The Board has considered whether factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Middlesboro market.¹⁵ Several factors indicate that the increase in concentration in the Middlesboro market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Middlesboro market is a relatively small, rural banking market and would continue to be served by nine depository institutions after consummation of the proposal. These include, apart from Commercial, one depository institution with more than a 20 percent share of market deposits, two depository institutions each with more than a 14 percent share of market deposits, and one depository institution with more than a five percent share of market deposits. In addition, the Board has considered the competitive influence of two credit unions among the nine depository institutions remaining in the Middlesboro market. These credit unions have broad membership criteria, offer a wide range of consumer banking products and operate street-level branches.¹⁶ Separated by state lines, each of these credit unions serves only a portion of the Middlesboro market. For that reason, the Board does not find that circumstances support including the deposits of these credit unions in its calculations to estimate market influence. Nevertheless, the presence of these viable credit unions, along with the other depository institutions in the Middlesboro market, suggests that Commercial would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Commercial in the Middlesboro market.¹⁷ The presence of the nine depository institu-

anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁵ The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. See *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

¹⁶ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

¹⁷ An additional assessment of the transaction, based on competitors' shares of the total number of branches in the market, also supports the view that the structural effects of the transaction would not substantially lessen competition. Branches are one way banks attract customers and are able to provide services to customers throughout the market. See, e.g., Katherine Ho and Joy Ishi, "Location and Competition in Retail Banking," *International Journal of Industrial Organization*, vol. 29, no. 5, pp. 537-546 (2011); Astrid Dick, "Demand Esti-

tions, including Commercial, together indicates that the structural effects of the transaction would not substantially lessen competition.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Middlesboro market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, in particular the structure of the relevant market, the number of remaining competitors, and other factors discussed above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Middlesboro market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁸ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Commercial and Commercial Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger with a subsequent merger of the subsidiary depository institutions.¹⁹ The asset quality, earnings, and liquidity of both Commercial Bank and Citizens Bank are consistent with approval, and Commercial appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

mation and Consumer Welfare in the Banking Industry," *Journal of Banking and Finance*, vol. 32, no. 8, pp. 1661-1676 (2008); and Robert M. Adams, Kenneth P. Brevoort, and Elizabeth K. Kiser, "Who Competes with Whom? The Case of Depository Institutions," *Journal of Industrial Economics*, vol. 55, no. 1, pp. 141-167 (2007). The increase in pro forma branch HHI, defined as the sum of the squared branch share for each institution in the market (where the branch share is defined as an institution's number of branches in the market divided by the total number of branches in the market), in the Middlesboro market would be 255 points to a level of 1786.

¹⁸ 12 U.S.C. §§ 1842(c)(2), (5), & (6), and 1828(c)(5) & (11).

¹⁹ As part of the proposed transaction, each share of Citizens' common stock would be converted into a right to receive cash based on a formula related to Citizens' total equity on the last day of the month preceding closing. Commercial has the financial resources to effect the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Commercial, Citizens, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Commercial; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Commercial, Citizens, and their subsidiary depository institutions are each considered to be well managed. Commercial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of Commercial have substantial knowledge of and experience in the banking and financial services sectors, and Commercial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Commercial's plans for implementing the proposal. Commercial has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Commercial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Commercial's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including Commercial's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Commercial and Citizens in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁰ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").²¹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²² and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²³

²⁰ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²¹ 12 U.S.C. § 2901 *et seq.*

²² 12 U.S.C. § 2901(b).

²³ 12 U.S.C. § 2903.

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Commercial Bank and Citizens Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the FDIC; confidential supervisory information; and information provided by Commercial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁴ In this case, the Board considered the supervisory views of the Reserve Bank and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),²⁶ automated loan reports, and other reports generated by the institution to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to any written complaints about its performance.²⁷ Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁵ 12 U.S.C. § 2906.

²⁶ 12 U.S.C. § 2801 *et seq.*

²⁷ See 12 CFR 228.26(b).

provide community development services, and their responsiveness to community development lending, investment, and service needs.²⁸

CRA Performance of Commercial Bank

Commercial Bank was assigned an overall “Satisfactory” rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 (“Commercial Bank Evaluation”).²⁹ The bank received “Satisfactory” ratings for each of the Lending Test and the Community Development Test.³⁰ Greater weight was given to performance in Tennessee because of the higher percentage of bank deposits, branches, and loans in that state.

Examiners concluded that Commercial Bank was responding to the credit needs of its AAs. In particular, examiners found that the loan-to-deposit ratio was reasonable given the bank’s size, financial condition, and AA credit needs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion throughout the AAs and that the distribution of loans reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners noted that Commercial Bank’s community development performance, which included loans, investments, and services, demonstrated adequate responsiveness to community development needs throughout the bank’s AAs. Examiners also noted that bank representatives provided community service hours to benefit LMI families and small businesses throughout the bank’s AAs.

CRA Performance of Citizens Bank

Citizens Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of March 9, 2015 (“Citizens Bank Evaluation”).³¹ Examiners focused on the bank’s loan-to-deposit ratio and lending record within the bank’s AAs. Examiners found that Citizens Bank’s loan-to-deposit ratio reflected reasonable responsiveness to the credit needs of the AAs, given the institution’s size, financial condition and AAs. Examiners also found that the majority of the bank’s home mortgage and small business lending was originated within its AAs, and its overall lending to borrowers of different incomes was reasonable. Examiners determined that the bank’s small business lending reflected excellent performance.

²⁸ See 12 CFR 228.26(c).

²⁹ The Commercial Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and a sample of commercial loans originated from January 1, 2013, through December 31, 2014. The evaluation period for community development lending, investments, and services was from April 17, 2012, to September 20, 2015.

³⁰ The Commercial Bank Evaluation included a full scope evaluation of the bank’s AA consisting of Knox and Union counties within the Knoxville, Tennessee Metropolitan Statistical Area (“MSA”), as well as its AA consisting of Bell-Harlan and Knox counties in Kentucky, which are not part of an MSA. A limited scope evaluation was performed of the bank’s AA consisting of Claiborne County, Tennessee, which is not part of any MSA, and of the bank’s AA consisting of Sullivan County within the Kingsport-Bristol-Bristol, Tennessee-Virginia MSA.

³¹ The Citizens Bank Evaluation was conducted using the Small Bank Examination Procedures. Examiners reviewed a sample of small business loans originated from January 1, 2012, to December 31, 2014, and also reviewed all HMDA-reportable loans for 2013 and 2014. The Citizens Bank Evaluation included a full scope evaluation of the bank’s AA located within Claiborne County, Tennessee, which is not part of any MSA. A limited scope evaluation was performed of the portion of the bank’s AA located within the Knoxville, Tennessee MSA and of the bank’s AA consisting of Hamblen County, which is part of the Morristown, Tennessee MSA.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Commercial Bank conducted by Reserve Bank examiners, which included a review of the bank's compliance risk management program and the bank's compliance with consumer protection laws and regulations. The Board has also considered the results of the most recent consumer compliance examination of Citizens Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of Commercial Bank and Citizens Bank, into account in evaluating the proposed transaction, including in considering whether Commercial has the experience and resources to ensure that Commercial Bank helps to meet the credit needs of the communities within its AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Commercial represents that the combined organization, with its greater size and capabilities, would have an increased lending limit and thereby would increase the availability of credit to customers and potential customers of both banks, including small- to mid-sized businesses. In addition, Commercial represents that customers of Citizens Bank would benefit from Commercial Bank's expansive branch network, and customers of Commercial Bank would benefit from additional banking offices in Claiborne and Hamblen counties, Tennessee, as well as a loan production office in Sullivan County, Tennessee. Commercial also represents that customers in communities served by Citizens Bank will benefit from the availability of additional products and services currently offered by Commercial Bank. Finally, Commercial represents that the increased size and scale of the combined organization may permit it to develop and expand product and service offerings to its customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the Reserve Bank and the FDIC, confidential supervisory information, information provided by Commercial, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."³²

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of

³² Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³³ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁴

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁵

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.³⁶ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

Commercial Bank has applied under section 9 of the FRA to establish branches at the current locations of Citizens Bank.³⁷ The Board has assessed the factors it is required to

³³ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³⁵ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁶ Commercial offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Citizens also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, Commercial has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

³⁷ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may retain any branch following a merger that under state law may be established as a new branch of the

consider when reviewing an application under that section.³⁸ Specifically, the Board has considered Commercial Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.³⁹ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Elections

As noted, Robertson Holding Company, L.P., and Unified Shares, LLC, have elected to become financial holding companies in connection with the proposal. Robertson Holding Company, L.P., and Unified Shares, LLC, have certified that, upon consummation of the proposal, they and the depository institutions they would control would be well capitalized and well managed, and Robertson Holding Company, L.P., and Unified Shares, LLC, have provided all the information required under the Board's Regulation Y.⁴⁰ Based on all the facts of record, the Board determines that the elections by Robertson Holding Company L.P., and Unified Shares, LLC, will become effective upon consummation of the proposal if, on that date, they are well capitalized and well managed and all depository institutions they control are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Commercial and Commercial Bank with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective December 15, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§36(b)(2) and (c). Upon consummation, Commercial Bank's branches would be permissible under applicable state law. *See* Tenn. Code Ann. § 45-2-614.

³⁸ 12 U.S.C. § 322; 12 CFR 208.6.

³⁹ Upon consummation of the proposed transaction, Commercial Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

⁴⁰ *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1).

Appendix

Branches to Be Established by Commercial Bank

1. 130 South Broad Street, New Tazewell, Tennessee 37825
2. 7100 Cumberland Gap Parkway, Harrogate, Tennessee 37752
3. 155 Terrace Lane, Morristown, Tennessee 37813

Orders Issued Under Federal Reserve Act

Frost Bank
San Antonio, Texas

*Order Approving the Establishment of a Branch
FRB Order No. 2017–33 (November 22, 2017)*

Frost Bank, a state member bank subsidiary of Cullen/Frost Bankers Incorporated, both of San Antonio, Texas, has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)¹ and the Board’s Regulation H² to establish a branch located at 640 Taylor Street, Fort Worth, Texas.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.³ The time for submitting comments has expired, and the Board has considered the proposal and the comments received in light of the factors specified in the FRA.

Cullen/Frost Bankers Incorporated, with total assets of \$31.0 billion, is the 48th largest depository organization in the United States, controlling approximately \$25.6 billion in deposits, which represent less than 1.0 percent of the total amount of deposits of insured depository institutions in the United States.⁴ Frost Bank operates through 148 branches located in Texas, and the bank’s main office is in San Antonio, Texas.

Under section 208.6 of the Board’s Regulation H,⁵ which implements section 9 of the FRA, the factors that the Board must consider in acting on a branch application include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank’s capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank’s performance under the Community Reinvestment Act (“CRA”);⁶ and (5) whether the bank’s investment in bank premises in establishing the branch satisfies certain criteria.⁷ The Board has considered the application in light of these factors and the public comments received on the proposal.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Frost Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Frost Bank, and the comments received on the proposal. Frost Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Frost Bank are consistent with approval, and Frost Bank appears to have adequate resources to absorb the costs of the proposal. In addition, future earnings prospects are considered consistent with approval. The Board also has reviewed Frost Bank’s

¹ 12 U.S.C. § 321.

² 12 CFR part 208.

³ 12 CFR 262.3(b).

⁴ Total assets are as of September 30, 2017. National asset ranking and deposit data are as of June 30, 2017.

⁵ 12 CFR 208.6(b).

⁶ 12 U.S.C. § 2901 *et seq.*

⁷ 12 CFR 208.21(a).

proposed investment in the branch and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.⁸

In considering Frost Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Frost Bank and the bank's record of compliance with applicable banking laws, including consumer protection and anti-money-laundering laws. Frost Bank is considered to be well managed. Frost Bank's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and the bank's risk-management program appears to be consistent with approval.

Based on this review and all the facts of record, the Board concludes that Frost Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of Frost Bank in combatting money-laundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.⁹ In this evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹⁰ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating a bank branching proposal.¹¹

In addition, the Board considers the bank's overall compliance record and the results of recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Frost Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Frost Bank, and the public comments received on the proposal.

⁸ 12 CFR 208.21(a).

⁹ 12 CFR 208.6(b)(3).

¹⁰ 12 U.S.C. § 2901(b).

¹¹ 12 U.S.C. § 2903.

Public Comments on the Proposal

A commenter objected to the proposal, alleging that Frost Bank has engaged in redlining in Dallas and Houston, Texas.¹² Specifically, the commenter alleged that Frost Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community development activities, and branching in those areas.

Business of the Applicant and Response to Comments

Through its network of branches, Frost Bank offers a broad range of loan and deposit products and services to consumers and businesses, including commercial and industrial, residential, agricultural, and consumer loans; personal checking and savings accounts; international banking, correspondent banking, and trust services; and treasury management services. In response to the comment, Frost Bank denies the commenter's allegations and represents that since 2015, it has opened nine branches that directly contribute to serving the needs of majority-minority communities, including three in Dallas and three in Houston. In addition, Frost Bank represents that it has developed and implemented a comprehensive marketing and outreach program to serve the needs of historically underserved neighborhoods, including majority-minority neighborhoods and individuals.

Record of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.¹³ In this case, the Board considered the information collected by and the findings of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank"), who conducted an on-site CRA performance evaluation of Frost Bank.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.¹⁴ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),¹⁵ in

¹² Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. *See* Interagency Fair Lending Examination Procedures (August 2009), available at <https://www.ffiec.gov/pdf/fairlend.pdf>.

¹³ *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

¹⁴ 12 U.S.C. § 2906.

¹⁵ 12 U.S.C. § 2801 *et seq.*

addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;¹⁶ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Frost Bank

Frost Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of July 13, 2015 ("Frost Bank Evaluation").¹⁷ The bank received an "Outstanding" rating for the Investment Test and "High Satisfactory" ratings for the Lending Test and the Service Test.¹⁸

Examiners found that Frost Bank's overall lending activity was responsive to the credit needs in all of its AAs. According to examiners, the bank made a substantial majority of its loans inside its AAs. Examiners noted that, overall, the distribution of the bank's home mortgage borrowers of different income levels was adequate and the bank's distribution of small business lending reflected good penetration among businesses of different revenue sizes. Examiners found that the bank's overall geographic distribution of loans reflected excellent penetration. Examiners noted that the bank made a relatively high level of community development loans for a variety of purposes, including multifamily housing, but the majority were for affordable housing and community services to individuals or LMI areas.

Examiners found Frost Bank's lending performance in the Houston AA to be good. Examiners found that the geographic distribution of the bank's loans in this AA reflected excellent penetration, and the bank's borrowers reflected adequate penetration among individuals of different income levels and businesses of different revenue sizes. Examiners found the bank's community development lending to be excellent, noting that the bank was a leader in making community development loans. In the Dallas AA, another area of

¹⁶ Examiners also consider the number and amounts of small business and small farm loans made to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

¹⁷ The Frost Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business and small farm lending activities reported by the bank from January 1, 2012, through December 31, 2014. For the Midland and Odessa, Texas, Metropolitan Statistical Areas ("MSAs"), the lending performance was based upon loan data for the period January 1, 2014, through December 31, 2014. The evaluation period for community development lending, investments, and services was January 1, 2012, through December 31, 2014. For the Midland and Odessa MSAs, the review period for community development activity was from January 1, 2014, through December 31, 2014.

¹⁸ The Frost Bank Evaluation included a full-scope review of the bank's AAs within the following MSAs: Austin-Round Rock-San Marcos, Texas, MSA; Fort Worth-Arlington, Texas, Metropolitan Division; Houston-Sugar Land-Bayton, Texas, MSA ("Houston AA"); McAllen-Edinburg-Mission, Texas, MSA; San Antonio-New Braunfels, Texas, MSA. A limited-scope review was conducted in the bank's AAs within the Brownsville-Harlington, Texas, MSA; Corpus Christi, Texas, MSA; Dallas-Plano-Irving, Texas, Metropolitan Division ("Dallas AA"); Midland, Texas, MSA; Odessa, Texas, MSA; and Willacy County, Texas.

concern for the commenter, examiners found the bank's lending performance to be below its overall lending performance, noting the bank's lower levels of community development lending.

Examiners found that the bank's investments demonstrated excellent responsiveness to the most pressing credit and community development needs throughout its AAs. Examiners found that the bank had an excellent level of qualified community development investments and grants, particularly those types not routinely provided by private investors. In addition, examiners noted that the bank made extensive use of innovative and/or complex investments to support community development initiatives. In the Houston AA, examiners found that the bank exhibited excellent responsiveness to credit and community development needs through its investment activities, which included investments for affordable housing. The bank's investment performance in the Dallas AA was found to be consistent with the bank's overall investment performance.

Examiners found that Frost Bank provided a relatively high level of community development services throughout its AAs. Frost Bank's retail delivery systems were found to be reasonably accessible to geographies and individuals of different income levels located in its AAs. Examiners further noted that Frost Bank's opening and closing of branches generally did not adversely affect the accessibility of banking services, particularly to LMI geographies and/or individuals. Examiners found that the banking services did not vary in a way that inconvenienced its AAs, particularly LMI geographies and individuals.

In the Houston AA, examiners found that Frost Bank's performance under the Service Test was adequate. Examiners compared the distribution of the bank's delivery systems to households and businesses within the area, and found the distribution impacted accessibility to portions of the bank's geographies and individuals of different income levels. Examiners found, however, that the bank's retail and community development services reflected adequate responsiveness to the needs of the AA. Moreover, examiners found that the bank's record of opening or closing branches in the Houston AA had generally not affected the accessibility of its delivery systems. In the Dallas AA, examiners concluded that Frost Bank's service performance was consistent with its overall service performance.

Frost Bank's Efforts Since the 2015 CRA Evaluation

Frost Bank represents that since the Frost Bank Evaluation, it has continued to help meet the credit needs of its AAs, including the needs of LMI communities and individuals. Frost Bank represents that it has made community development loans that promote affordable housing and support economic development and revitalization, as well as loans to organizations providing community services to LMI individuals and families. In addition, the bank asserts that it has continued to purchase mortgage-backed securities secured by mortgage loans made to LMI borrowers, invested in school bonds that fund economically disadvantaged school districts throughout Texas, and made contributions to benefit the community directly in each of the bank's AAs, including Dallas and Houston. The bank represents that it has continued to make available a low-cost checking account and low-cost unsecured and secured home improvement loans for LMI individuals. Additionally, Frost Bank asserts that it has continued to provide financial education for youths, adults, seniors, and small businesses and has conducted educational events for LMI homeowners on home improvement, home-improvement loan options, and the importance of good credit.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examinations of Frost Bank conducted by the Reserve Bank, which included a review of the

compliance management program and compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated Frost Bank's fair lending management program, including the bank's fair-lending-related practices, policies, procedures, and internal controls. In addition, the Board has consulted with the Consumer Financial Protection Bureau concerning the bank's supervisory record.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. The bank represents that an existing bank branch will be closed concurrently with the opening of the proposed branch and that the distance between the two branches was just slightly over the threshold requiring the bank to treat this as a branch opening/closure rather than a relocation. The bank asserts that the proposed branch would be easier to access than the current branch, provide customers access to all of the bank's financial services in a single location, and provide a higher level of security for the bank's employees and customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA record of Frost Bank, the bank's record of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Frost Bank, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.¹⁹ The Board's approval is specifically conditioned on Frost Bank's compliance with all the commitments made to the Board in connection with the proposal, as well as all conditions imposed in this order. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The branch must be established within one year of the date of this order, unless such period is extended for good cause by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective November 22, 2017.

¹⁹ The Board construes the comments received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in a relevant newspaper of general circulation on July 13, 2017. The comment period ended on July 28, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

National Bank Holdings Corporation Greenwood Village, Colorado

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-34 (November 28, 2017)

National Bank Holdings Corporation (“NBH”), Greenwood Village, Colorado, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Peoples, Inc. (“Peoples”), Lawrence, Kansas, and thereby indirectly acquire Peoples Bank, Lawrence, Kansas, and Peoples National Bank (“PNB”), Colorado Springs, Colorado.

In addition, NBH’s subsidiary state member bank, NBH Bank (together with NBH, “Applicants”), Greenwood Village, Colorado, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Peoples Bank and PNB, with NBH Bank as the surviving entity.³ NBH Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main offices and branches of Peoples Bank and PNB.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 37589 (August 11, 2017)).⁵ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

NBH, with consolidated assets of approximately \$4.7 billion, is the 212th largest insured depository organization in the United States. NBH controls approximately \$3.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ NBH controls NBH Bank, which operates in Colorado, Kansas, Missouri, and Texas. NBH is the 25th largest insured depository organization in Kansas, controlling deposits of approximately \$574.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷ NBH is the 15th largest insured depository organization in Colorado, controlling deposits of approximately \$1.5 billion, which represent approximately 1.2 percent of the total deposits of insured depository institutions in that state.

Peoples, with consolidated assets of approximately \$924.3 million, is the 796th largest insured depository organization in the United States.⁸ Peoples controls approximately

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. In addition, NBH Bank has applied under section 9 of the FRA to establish branches at certain locations of Peoples Bank that currently only provide limited services. The locations of all of the branches to be established are listed in the Appendix.

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

⁷ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

⁸ The Winter Trust of 12/3/74 (“Winter Trust”), Lawrence, Kansas, is a registered bank holding company that controls Peoples. After consummation of the proposed transaction, the Winter Trust is expected to deregister as a bank holding company.

\$724.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Peoples controls Peoples Bank, which operates in Kansas and New Mexico, and PNB, which operates in Colorado. Peoples is the 69th largest insured depository organization in Kansas, controlling deposits of approximately \$220.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Peoples is the 42nd largest insured depository organization in Colorado, controlling deposits of approximately \$265.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, NBH would become the 192nd largest insured depository organization in the United States, with consolidated assets of approximately \$5.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. NBH would control consolidated deposits of approximately \$4.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Kansas, NBH would become the 14th largest insured depository organization, controlling deposits of approximately \$794.5 million, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state. In Colorado, NBH would become the 14th largest insured depository organization, controlling deposits of approximately \$1.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁹ Section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.¹⁰ The Board may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.¹¹ In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping operations.¹²

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1831u(a)(1).

¹¹ 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

¹² 12 U.S.C. § 1842(d)(2)(A) & (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

For purposes of the BHC Act, the home state of NBH is Missouri, Peoples Bank is located in Kansas and New Mexico, and PNB is located in Colorado.¹³ For purposes of section 44 of the FDI Act, the home state of NBH Bank is Colorado, and the home states of Peoples Bank and PNB are Kansas and Colorado, respectively.¹⁴ NBH and NBH Bank are well capitalized and well managed under applicable law, and NBH Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹⁵ Kansas has a five-year minimum age requirement and there are no minimum age requirements under the laws of Colorado or New Mexico that would apply to the proposal.¹⁶ Peoples Bank and PNB have each been in existence for more than 5 years.

On consummation of the proposed transaction, NBH would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Each of Kansas, Colorado, and New Mexico imposes a limit on the total amount of in-state deposits that a single banking organization may control. Specifically, Kansas imposes a 15 percent deposit limit, Colorado imposes a 25 percent deposit limit, and New Mexico imposes a 40 percent deposit limit.¹⁷ The combined organization would control approximately 1.1 percent of the total amount of deposits of insured depository institutions in Kansas, approximately 1.4 percent of the total amount of deposits of insured depository institutions in Colorado, and less than 1 percent of the total amount of deposits of insured depository institutions in New Mexico. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act, including NBH Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under both statutes.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁸ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁹

NBH and Peoples have subsidiary depository institutions that compete directly in the Colorado Springs, Colorado, banking market (“Colorado Springs market”) and the Kansas City, Missouri, banking market (“Kansas City market”).²⁰ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the

¹³ See 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank’s home state is the state in which the bank is chartered.

¹⁴ For purposes of section 44 of the FDI Act, a state bank’s home state is the state in which the bank is chartered, and a national bank’s home state is the state in which the main office of the bank is located. 12 U.S.C. § 1831u(g)(4).

¹⁵ 12 U.S.C. § 2901 *et seq.*

¹⁶ See Kan. Stat. Ann. § 9-541.

¹⁷ See Kan. Stat. Ann. § 9-520; Colo. Rev. Stat. § 11-104-202(4); N.M. Stat. Ann. § 58-1C-5(B).

¹⁸ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

¹⁹ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

²⁰ The Colorado Springs market includes the Colorado Springs, Colorado, Ranally Metropolitan Area (“RMA”), and the non-RMA portions of El Paso and Teller counties, both of Colorado. The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden, and Kingsville in Johnson County,

Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits of insured depository institutions in the markets (“market deposits”) that NBH would control;²¹ the concentration levels of market deposits and the increases in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²² and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Colorado Springs and Kansas City markets. On consummation of the proposal, the Colorado Springs market would remain moderately concentrated and the Kansas City market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.²³

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Colorado Springs or Kansas City markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Missouri; the towns of Adrian, Amsterdam, and Butler in Bates County, Missouri; Franklin, Johnson, Leavenworth, Miami, and Wyandotte counties, all of Kansas; and Linn County, Kansas (excluding the towns of Blue Mound and Prescott).

²¹ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

²² Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

²³ NBH operates the 36th largest depository institution in the Colorado Springs market, controlling approximately \$18.1 million in deposits, which represent approximately 0.2 percent of market deposits. Peoples operates the 8th largest depository institution in the same market, controlling deposits of approximately \$211.4 million, which represent approximately 2.8 percent of market deposits. On consummation of the proposed transaction, NBH would become the 8th largest depository organization in the market, controlling deposits of approximately \$229.4 million, which represent approximately 3 percent of market deposits. The HHI for the Colorado Springs market would increase by 2 points to 1068, and 38 competitors would remain in the market.

NBH operates the 6th largest depository institution in the Kansas City market, controlling approximately \$1.6 billion in deposits, which represent approximately 3.2 percent of market deposits. Peoples operates the 34th largest depository institution in the same market, controlling deposits of approximately \$174.5 million, which represent approximately 0.4 percent of market deposits. On consummation of the proposed transaction, NBH would remain the 6th largest depository organization in the market, controlling deposits of approximately \$1.7 billion, which represent approximately 3.5 percent of market deposits. The HHI for the Kansas City market would increase by 3 points to 847, and 115 competitors would remain in the market.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²⁴ In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

NBH and NBH Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with subsequent mergers of Peoples Bank and PNB with and into NBH Bank.²⁵ The asset quality, earnings, and liquidity of NBH Bank, Peoples Bank, and PNB are each consistent with approval, and NBH appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of NBH, Peoples, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by NBH, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

NBH and its subsidiary depository institution are each considered to be well managed. NBH has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. NBH's directors and senior executive officers have substantial knowledge of and experience in the banking and financial sectors, and NBH's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered NBH's plans for implementing the proposal. NBH has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. NBH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, NBH's management has the experience and resources to operate the combined

²⁴ 12 U.S.C. §§ 1842(c)(2), (5) & (6), and 1828(c)(5) & (11).

²⁵ To effect the transaction, each share of Peoples common stock would be converted into a right to receive cash and NBH common stock, based on an exchange ratio. NBH has the financial resources to effect the proposed transaction.

organization in a safe and sound manner, and NBH plans to integrate the existing management and personnel of Peoples in a manner that augments NBH's management.²⁶

Based on all the facts of record, including NBH's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of NBH and Peoples in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁷ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.²⁸ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.³⁰

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of NBH Bank, Peoples Bank, and PNB; the compliance records of each bank; the supervisory views of the Federal Reserve Bank of Kansas City ("Reserve Bank"); confidential supervisory information; and information provided by NBH.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as infor-

²⁶ Following consummation of the proposed transaction, certain officers and employees of Peoples Bank and PNB will join NBH Bank.

²⁷ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁸ 12 U.S.C. § 2901 *et seq.*

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

mation and views provided by the appropriate federal supervisors.³¹ In this case, the Board considered the views of the Reserve Bank.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³² An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),³³ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁴ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of NBH Bank

NBH Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of December 5, 2016 ("NBH Bank Evaluation").³⁵ The bank received an "Outstanding" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.³⁶ Examiners found that NBH

³¹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³² 12 U.S.C. § 2906.

³³ 12 U.S.C. § 2801 *et seq.*

³⁴ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

³⁵ The NBH Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, business, and farm loans, as well as community development activities (loans, investments, and services), from January 1, 2011, through December 31, 2015.

³⁶ The NBH Bank Evaluation included full-scope evaluations in the Kansas City, Combined Statistical Area; Denver, Colorado Metropolitan Statistical Area ("MSA"); Rural Colorado AA; Northwest Rural Missouri AA; and the Dallas, Texas Metropolitan Division. Limited scope evaluations were performed in the Colorado Springs, Colorado MSA; Fort Collins, Colorado MSA; Greeley, Colorado MSA; Pueblo, Colorado MSA; Grand Junction, Colorado MSA; North Central Rural Missouri AA; Northeast Rural Missouri AA; and Austin, Texas MSA.

Bank's overall lending activity reflected good responsiveness to the credit needs of its AAs. Examiners found that the bank originated a substantial majority of its HMDA, business, and farm loans within its AAs and that the geographic distribution of the bank's HMDA, business, and farm loans was good. In addition, examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses and farms of different sizes. Examiners noted that NBH Bank was a leader in making loans that revitalized and stabilized LMI geographies, as well as loans for economic development.

Examiners determined that NBH Bank demonstrated an adequate responsiveness to the community development needs of its AAs through investments and service activity. Examiners found that the bank's community development investments primarily consisted of mortgage-backed securities comprised of loans to LMI borrowers or secured by a residential mortgage within an LMI census tract. In addition, examiners found that the bank's products, services, and business hours did not vary in a way that inconvenienced customers in its AAs, particularly those in LMI geographies and individuals.

CRA Performance of Peoples Bank

Peoples Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 6, 2012 ("Peoples Bank Evaluation").³⁷ The bank received "Satisfactory" ratings for each of the Lending Test and the Community Development Test.³⁸

Examiners found that Peoples Bank's average net loan-to-deposit ratio, which is a measure of the overall level of lending, was more than reasonable given the bank's size and financial condition and the credit needs of the bank's AAs. Examiners also found that a majority of the bank's home purchase, home improvement, and business loans were originated within the bank's AAs and that the geographic and borrower distribution of loans reflected reasonable penetration throughout the bank's AAs.

Examiners noted that Peoples Bank's community development performance, which included loans, donations, and services, demonstrated adequate responsiveness to community development needs throughout its AAs. The bank was found to have performed service activities for various organizations, particularly those providing community services targeted to LMI individuals or families.

CRA Performance of PNB

PNB was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of June 6, 2011 ("PNB Evaluation").³⁹ Examiners found that PNB's loan-to-deposit ratio was excellent, given area competition and the credit needs of the community. Examiners also found that the majority of the bank's loans by number and dollar amount were originated within its AA

³⁷ The Peoples Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. Examiners reviewed HMDA loans from 2010 and 2011 and business loans from a six-month period that ended June 12, 2012. Examiners also reviewed community development activities (loans, investments, and services), from June 21, 2010, through August 6, 2012.

³⁸ The Peoples Bank Evaluation included full-scope evaluations in the Kansas City, Missouri-Kansas MSA, and the Albuquerque, New Mexico MSA. Limited scope evaluations were performed in the Lawrence, Kansas MSA and Non-Metropolitan, Taos County, New Mexico Non-MSA.

³⁹ The PNB Evaluation was conducted using Small Bank CRA Examination Procedures. Examiners reviewed commercial real estate loans from January 2006 through May 2011, and HMDA loans from January 1, 2010, through March 31, 2011. The PNB Evaluation included a full-scope review of the bank's AA, the El Paso County, Colorado MSA.

and its overall lending to borrowers of different incomes and to small businesses was reasonable. Examiners determined that the bank's lending to small businesses was excellent and noted that the bank's distribution of loans to small businesses exceeded the demographic comparator.

Examiners found that the geographic distribution of PNB's residential real estate loans reflected reasonable dispersion throughout the geographies for different income levels. Examiners also found that the geographic distribution of PNB's business loans within the bank's AA was excellent.

Additional Convenience and Needs Considerations

The Board has entered into a Consent Order with Peoples Bank with respect to deceptive practices in violation of section 5 of the Federal Trade Commission Act,⁴⁰ which were centered in Peoples Bank's national mortgage business line. This business line, which is separate and apart from the Bank's community banking operations, is being terminated and is not being assumed by NBH as part of this proposal. Pursuant to the Consent Order, Peoples Bank has agreed to pay restitution to affected customers and to set aside at least \$2.8 million for this purpose. Because NBH is not a party to the Consent Order, this order is conditioned on NBH's commitment to cause NBH Bank to comply with Peoples Bank's restitution and related Consent Order obligations.

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. NBH represents that it does not have any plans to discontinue any product or service currently offered by Peoples Bank or PNB. NBH represents that, following the proposed transaction, its customers would gain access to products and services not currently offered by NBH Bank, including wealth and investment services through a third-party broker-dealer relationship and health savings accounts and payroll services through another third-party relationship. In addition, NBH represents that the proposed transaction would provide expanded product capabilities to customers of Peoples Bank and PNB, including access to NBH Bank's credit card offerings, a merchant-funded debit card cash back program, and various online banking features, such as wire transfers, person-to-person payments, and personal financial management tools. In addition, NBH represents that customers of NBH and Peoples would benefit from a larger branch and ATM network.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with consumer protection laws, confidential supervisory information, information provided by NBH, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to

⁴⁰ 15 U.S.C. § 45.

consider a proposal’s “risk to the stability of the United States banking or financial system.”⁴¹

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴² These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴³

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁴

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.⁴⁵ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

⁴¹ Dodd-Frank Act §§ 604(d) & (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

⁴² Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

⁴³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁴ See *Peoples United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

⁴⁵ NBH offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Peoples also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, NBH has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

Establishment of Branches

NBH Bank has applied under section 9 of the FRA to establish branches at the current locations of Peoples Bank and PNB.⁴⁶ The Board has assessed the factors it is required to consider when reviewing an application under that section.⁴⁷ Specifically, the Board has considered NBH Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective November 28, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

⁴⁶ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2) & (c). In addition, under section 44 of the FDI Act, a bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, NBH Bank's branches would be permissible under applicable state law. See Kan. Stat. Ann. § 9-1111(b); Colo. Rev. Stat. §§ 11-105-602 and 603; N.M. Stat. Ann. § 58-5-2.

⁴⁷ 12 U.S.C. § 322; 12 CFR 208.6.

Appendix

Branches to Be Established by NBH Bank

1. 745 New Hampshire Street, Lawrence, Kansas 66044
2. 4831 West 6th Street, Lawrence, Kansas 66049
3. 1506 South Main Street, Ottawa, Kansas 66067
4. 434 South Main Street, Ottawa, Kansas 66067
5. 7579 West 151st Street, Overland Park, Kansas 66223
6. 3045 Iowa Street, Lawrence, Kansas 66046
7. 212 South Broadway Street, Louisburg, Kansas 66053
8. 13180 Metcalf Avenue, Overland Park, Kansas 66213
9. 5 Supermarket Road, Questa, New Mexico 87556
10. 121 East Main Street, Red River, New Mexico 87558
11. 710 Paseo Del Pueblo Sur, Suite A, Taos, New Mexico 87571
12. 219 Paseo Del Pueblo Norte, Taos, New Mexico 87571
13. 2155 Louisiana Boulevard Northeast, Suite 1000, Albuquerque, New Mexico, 87110
14. 1356 Paseo Del Pueblo Sur, Taos, New Mexico 87571
15. 19 North Tejon, Suite 100, Colorado Springs, Colorado 80903
16. 5175 North Academy Boulevard, Colorado Springs, Colorado 80918
17. 13725 Struthers Road, Suite 200, Colorado Springs, Colorado 80921
18. 400 Harrison Avenue, Leadville, Colorado 80461
19. 1899 Woodmoor Drive, Monument, Colorado 80132
20. 651 Scott Avenue, Woodland Park, Colorado 80863

Robertson Holding Company, L.P.
Harrogate, Tennessee

Unified Shares, LLC
Harrogate, Tennessee

Commercial Bancgroup, Inc.
Harrogate, Tennessee

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, the Establishment of Branches, and Determination on Financial Holding Company Elections
FRB Order No. 2017-36 (December 15, 2017)

Commercial Bancgroup, Inc., and its parent companies, Robertson Holding Company, L.P., and Unified Shares, LLC, all of Harrogate, Tennessee (collectively, “Commercial”), all bank holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ have requested the Board’s approval under section 3 of the BHC Act² for Commercial Bancgroup, Inc. to merge with Citizens Bancorp, Inc. (“Citizens”), and thereby indirectly acquire Citizens’ subsidiary bank, Citizens Bank, both of New Tazewell, Tennessee.

In addition, Commercial’s subsidiary state member bank, Commercial Bank, Harrogate, Tennessee, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Citizens Bank, with Commercial Bank as the surviving entity.³ Commercial Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Citizens Bank.⁴ Robertson Holding Company, L.P., and Unified Shares, LLC, have filed with the Board elections to become financial holding companies pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 44183 (September 21, 2017)).⁶ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Commercial is the 784th largest insured depository organization in the United States. Commercial controls approximately \$760.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Commercial controls Commercial Bank, which operates in Tennessee and Kentucky. Commercial is the 42nd largest insured depository organization in

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These branch locations are listed in the Appendix.

⁵ 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

⁶ 12 CFR 262.3(b).

⁷ National deposit, market share, and ranking data are as of June 30, 2017, unless otherwise noted.

Tennessee, controlling approximately \$536.2 million in deposits, which represent approximately 0.4 percent of the total deposits of insured depository institutions in that state.⁸

Citizens is the 3001st largest insured depository organization in the United States. Citizens controls approximately \$179.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Citizens controls Citizens Bank, which operates in Tennessee.⁹ Citizens is the 115th largest insured depository organization in Tennessee, controlling approximately \$146.9 million in deposits, which represent approximately 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Commercial would become the 635th largest insured depository organization in the United States, with consolidated assets of approximately \$1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Commercial would control consolidated deposits of approximately \$939.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, Commercial would become the 31st largest insured depository organization, controlling deposits of approximately \$683.1 million, which represent approximately 0.5 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁰ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹¹

Commercial and Citizens have subsidiary depository institutions that compete directly in the Middlesboro Area, KY-TN-VA banking market (“Middlesboro market”).¹² The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market (“market deposits”) that Commercial would control;¹³ the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁴ and other characteristics of the Middlesboro market.

⁸ State deposit, market share, and ranking data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁹ The proposal does not raise interstate issues under section 3(d) of the BHC Act because Tennessee is the home state of both Commercial and Citizens Bank, and Citizens Bank operates only in Tennessee. *See* 12 U.S.C. § 1842(d).

¹⁰ 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

¹¹ 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

¹² The Middlesboro market is defined as Bell County, Kentucky, and Claiborne County, Tennessee; plus the towns of Rose Hill and Ewing in Lee County, Virginia.

¹³ Local deposit and market share data are as of June 30, 2017.

¹⁴ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating

The competitive effects of the proposal in the Middlesboro market warrant a detailed review because the proposal would result in a concentration level that would exceed the thresholds in the DOJ Bank Merger Guidelines and would result in the market deposit share of Commercial exceeding 35 percent when using initial competitive screening data. Commercial is the largest competitor in the Middlesboro market, controlling approximately \$281.6 million in deposits, which represent approximately 22.7 percent of market deposits. Citizens is the fifth largest depository organization in the Middlesboro market, controlling approximately \$110.9 million in deposits, which represent approximately 12.6 percent of market deposits. On consummation of the proposal, Commercial would remain the largest depository organization in the Middlesboro market, controlling approximately \$392.5 million in market deposits, which would represent approximately 35.3 percent of market deposits. The HHI in this market would increase by 571 points, from 1626 to 2197.

The Board has considered whether factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Middlesboro market.¹⁵ Several factors indicate that the increase in concentration in the Middlesboro market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Middlesboro market is a relatively small, rural banking market and would continue to be served by nine depository institutions after consummation of the proposal. These include, apart from Commercial, one depository institution with more than a 20 percent share of market deposits, two depository institutions each with more than a 14 percent share of market deposits, and one depository institution with more than a five percent share of market deposits. In addition, the Board has considered the competitive influence of two credit unions among the nine depository institutions remaining in the Middlesboro market. These credit unions have broad membership criteria, offer a wide range of consumer banking products and operate street-level branches.¹⁶ Separated by state lines, each of these credit unions serves only a portion of the Middlesboro market. For that reason, the Board does not find that circumstances support including the deposits of these credit unions in its calculations to estimate market influence. Nevertheless, the presence of these viable credit unions, along with the other depository institutions in the Middlesboro market, suggests that Commercial would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Commercial in the Middlesboro market.¹⁷ The presence of the nine depository institu-

anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁵ The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. See *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

¹⁶ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

¹⁷ An additional assessment of the transaction, based on competitors' shares of the total number of branches in the market, also supports the view that the structural effects of the transaction would not substantially lessen competition. Branches are one way banks attract customers and are able to provide services to customers throughout the market. See, e.g., Katherine Ho and Joy Ishi, "Location and Competition in Retail Banking," *International Journal of Industrial Organization*, vol. 29, no. 5, pp. 537-546 (2011); Astrid Dick, "Demand Esti-

tions, including Commercial, together indicates that the structural effects of the transaction would not substantially lessen competition.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market, including the Middlesboro market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, in particular the structure of the relevant market, the number of remaining competitors, and other factors discussed above, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Middlesboro market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁸ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Commercial and Commercial Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger with a subsequent merger of the subsidiary depository institutions.¹⁹ The asset quality, earnings, and liquidity of both Commercial Bank and Citizens Bank are consistent with approval, and Commercial appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects under the proposal are considered consistent with approval.

mation and Consumer Welfare in the Banking Industry," *Journal of Banking and Finance*, vol. 32, no. 8, pp. 1661-1676 (2008); and Robert M. Adams, Kenneth P. Brevoort, and Elizabeth K. Kiser, "Who Competes with Whom? The Case of Depository Institutions," *Journal of Industrial Economics*, vol. 55, no. 1, pp. 141-167 (2007). The increase in pro forma branch HHI, defined as the sum of the squared branch share for each institution in the market (where the branch share is defined as an institution's number of branches in the market divided by the total number of branches in the market), in the Middlesboro market would be 255 points to a level of 1786.

¹⁸ 12 U.S.C. §§ 1842(c)(2), (5), & (6), and 1828(c)(5) & (11).

¹⁹ As part of the proposed transaction, each share of Citizens' common stock would be converted into a right to receive cash based on a formula related to Citizens' total equity on the last day of the month preceding closing. Commercial has the financial resources to effect the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Commercial, Citizens, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Commercial; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Commercial, Citizens, and their subsidiary depository institutions are each considered to be well managed. Commercial has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. The directors and senior executive officers of Commercial have substantial knowledge of and experience in the banking and financial services sectors, and Commercial's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Commercial's plans for implementing the proposal. Commercial has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Commercial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Commercial's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including Commercial's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Commercial and Citizens in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁰ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").²¹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²² and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²³

²⁰ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²¹ 12 U.S.C. § 2901 *et seq.*

²² 12 U.S.C. § 2901(b).

²³ 12 U.S.C. § 2903.

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicants. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Commercial Bank and Citizens Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the FDIC; confidential supervisory information; and information provided by Commercial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁴ In this case, the Board considered the supervisory views of the Reserve Bank and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),²⁶ automated loan reports, and other reports generated by the institution to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to any written complaints about its performance.²⁷ Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁵ 12 U.S.C. § 2906.

²⁶ 12 U.S.C. § 2801 *et seq.*

²⁷ See 12 CFR 228.26(b).

provide community development services, and their responsiveness to community development lending, investment, and service needs.²⁸

CRA Performance of Commercial Bank

Commercial Bank was assigned an overall “Satisfactory” rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 (“Commercial Bank Evaluation”).²⁹ The bank received “Satisfactory” ratings for each of the Lending Test and the Community Development Test.³⁰ Greater weight was given to performance in Tennessee because of the higher percentage of bank deposits, branches, and loans in that state.

Examiners concluded that Commercial Bank was responding to the credit needs of its AAs. In particular, examiners found that the loan-to-deposit ratio was reasonable given the bank’s size, financial condition, and AA credit needs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion throughout the AAs and that the distribution of loans reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners noted that Commercial Bank’s community development performance, which included loans, investments, and services, demonstrated adequate responsiveness to community development needs throughout the bank’s AAs. Examiners also noted that bank representatives provided community service hours to benefit LMI families and small businesses throughout the bank’s AAs.

CRA Performance of Citizens Bank

Citizens Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of March 9, 2015 (“Citizens Bank Evaluation”).³¹ Examiners focused on the bank’s loan-to-deposit ratio and lending record within the bank’s AAs. Examiners found that Citizens Bank’s loan-to-deposit ratio reflected reasonable responsiveness to the credit needs of the AAs, given the institution’s size, financial condition and AAs. Examiners also found that the majority of the bank’s home mortgage and small business lending was originated within its AAs, and its overall lending to borrowers of different incomes was reasonable. Examiners determined that the bank’s small business lending reflected excellent performance.

²⁸ See 12 CFR 228.26(c).

²⁹ The Commercial Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and a sample of commercial loans originated from January 1, 2013, through December 31, 2014. The evaluation period for community development lending, investments, and services was from April 17, 2012, to September 20, 2015.

³⁰ The Commercial Bank Evaluation included a full scope evaluation of the bank’s AA consisting of Knox and Union counties within the Knoxville, Tennessee Metropolitan Statistical Area (“MSA”), as well as its AA consisting of Bell-Harlan and Knox counties in Kentucky, which are not part of an MSA. A limited scope evaluation was performed of the bank’s AA consisting of Claiborne County, Tennessee, which is not part of any MSA, and of the bank’s AA consisting of Sullivan County within the Kingsport-Bristol-Bristol, Tennessee-Virginia MSA.

³¹ The Citizens Bank Evaluation was conducted using the Small Bank Examination Procedures. Examiners reviewed a sample of small business loans originated from January 1, 2012, to December 31, 2014, and also reviewed all HMDA-reportable loans for 2013 and 2014. The Citizens Bank Evaluation included a full scope evaluation of the bank’s AA located within Claiborne County, Tennessee, which is not part of any MSA. A limited scope evaluation was performed of the portion of the bank’s AA located within the Knoxville, Tennessee MSA and of the bank’s AA consisting of Hamblen County, which is part of the Morristown, Tennessee MSA.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Commercial Bank conducted by Reserve Bank examiners, which included a review of the bank's compliance risk management program and the bank's compliance with consumer protection laws and regulations. The Board has also considered the results of the most recent consumer compliance examination of Citizens Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

The Board has taken this information, as well as the CRA performance records of Commercial Bank and Citizens Bank, into account in evaluating the proposed transaction, including in considering whether Commercial has the experience and resources to ensure that Commercial Bank helps to meet the credit needs of the communities within its AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Commercial represents that the combined organization, with its greater size and capabilities, would have an increased lending limit and thereby would increase the availability of credit to customers and potential customers of both banks, including small- to mid-sized businesses. In addition, Commercial represents that customers of Citizens Bank would benefit from Commercial Bank's expansive branch network, and customers of Commercial Bank would benefit from additional banking offices in Claiborne and Hamblen counties, Tennessee, as well as a loan production office in Sullivan County, Tennessee. Commercial also represents that customers in communities served by Citizens Bank will benefit from the availability of additional products and services currently offered by Commercial Bank. Finally, Commercial represents that the increased size and scale of the combined organization may permit it to develop and expand product and service offerings to its customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the Reserve Bank and the FDIC, confidential supervisory information, information provided by Commercial, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."³²

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of

³² Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³³ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opacity and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁴

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁵

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.³⁶ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

Commercial Bank has applied under section 9 of the FRA to establish branches at the current locations of Citizens Bank.³⁷ The Board has assessed the factors it is required to

³³ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³⁵ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁶ Commercial offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Citizens also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, Commercial has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

³⁷ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may retain any branch following a merger that under state law may be established as a new branch of the

consider when reviewing an application under that section.³⁸ Specifically, the Board has considered Commercial Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.³⁹ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Elections

As noted, Robertson Holding Company, L.P., and Unified Shares, LLC, have elected to become financial holding companies in connection with the proposal. Robertson Holding Company, L.P., and Unified Shares, LLC, have certified that, upon consummation of the proposal, they and the depository institutions they would control would be well capitalized and well managed, and Robertson Holding Company, L.P., and Unified Shares, LLC, have provided all the information required under the Board's Regulation Y.⁴⁰ Based on all the facts of record, the Board determines that the elections by Robertson Holding Company L.P., and Unified Shares, LLC, will become effective upon consummation of the proposal if, on that date, they are well capitalized and well managed and all depository institutions they control are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Commercial and Commercial Bank with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective December 15, 2017.

Voting for this action: Chair Yellen, Vice Chairman for Supervision Quarles, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§36(b)(2) and (c). Upon consummation, Commercial Bank's branches would be permissible under applicable state law. *See* Tenn. Code Ann. § 45-2-614.

³⁸ 12 U.S.C. § 322; 12 CFR 208.6.

³⁹ Upon consummation of the proposed transaction, Commercial Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

⁴⁰ *See* Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1).

Appendix

Branches to Be Established by Commercial Bank

1. 130 South Broad Street, New Tazewell, Tennessee 37825
2. 7100 Cumberland Gap Parkway, Harrogate, Tennessee 37752
3. 155 Terrace Lane, Morristown, Tennessee 37813

Order Issued Under International Banking Act

ING Bank N.V.
Amsterdam, The Netherlands

*Order Approving the Establishment of a Representative Office
FRB Order No. 2017-27 (October 20, 2017)*

ING Bank N.V. (“ING Bank”), Amsterdam, The Netherlands, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in Dallas, Texas. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Dallas, Texas (*The Dallas Morning News*, June 25, 2017). The time for submitting comments has expired, and the Board has considered all comments received.

ING Bank is a wholly owned subsidiary of ING Groep N.V. (“ING Group”), Amsterdam, The Netherlands. ING Group, with total assets of \$983.5 billion, is one of the world’s largest financial services providers, offering commercial and investment banking, asset management, and related products and services. ING Group shares are widely held, with BlackRock, Inc., New York, New York, being the only shareholder that holds five percent or more of its voting shares.²

ING Bank, with total assets of approximately \$983.5 billion, is the largest bank in the Netherlands by asset size.³ ING Bank engages in retail, wholesale, and international banking and operates in Europe, North and South America, Asia, and Australia. In the United States, ING Bank operates a representative office in New York, New York (the “New York Representative Office”), and operates subsidiaries that engage in securities brokerage and dealing, swaps dealing, and wholesale financial lending and advisory services.

The proposed representative office would act as a liaison with U.S. clients and prospective clients of ING Bank. The proposed representative office also would engage in other representational activities, including marketing and conducting research.⁴

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking

¹ 12 U.S.C. §3107(a).

² Stichting Continuïteit ING, Amsterdam, The Netherlands (“Stichting”), a foundation organized to ensure ING Group’s continuity in the event of a hostile takeover attempt, holds call options exercisable for as much as one-third of ING Group’s issued share capital. Stichting engages in no activities other than holding the ING Group call options and is not regulated as a financial institution by De Nederlandsche Bank or the European Central Bank.

³ Asset and ranking data are as of June 30, 2017.

⁴ A representative office may engage in representational and administrative functions in connection with the banking activities of a foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

outside the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁵ The Board also considers additional standards set forth in the IBA and Regulation K.⁶

The Board previously determined, in connection with ING Bank's application to establish the New York Representative Office, that ING Bank was subject to comprehensive supervision on a consolidated basis by De Nederlandsche Bank ("DNB").⁷ As of November 4, 2014, ING Bank is subject to the direct prudential supervision of the European Central Bank ("ECB") within the context of the Single Supervisory Mechanism ("SSM") because the total value of its assets exceeds €30 billion and it is one of the three largest banks in a Member State of the European Union. The SSM is a system of financial supervision composed of the ECB and the national competent authorities of the participating Member States in which specific tasks are allocated between the ECB and each national competent authority. Under the SSM, the ECB has direct prudential supervisory responsibility for ING Bank, while the DNB, as the relevant national competent authority for ING Bank, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing.

The methodologies and standards that underpin the day-to-day supervision of large European Union banking organizations by the ECB under the SSM regulatory framework are aimed at achieving a consistent supervisory approach across the European Union. The Board has previously found that three other European banking organizations supervised by the SSM and the relevant national competent authority are subject to comprehensive consolidated supervision.⁸ The supervisory processes of the DNB and the system of supervision applied to all large banks within the European Union have not changed materially since they were last considered by the Board.

Based on all the facts of record, including the above information, the Board determined that ING Bank is subject to comprehensive supervision on a consolidated basis by the ECB and the DNB acting through the SSM.

⁵ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

⁶ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include the following: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

⁷ *ING Bank, N.V.*, 85 *Federal Reserve Bulletin* 448 (1999).

⁸ See Board letter to Rita Milazzo dated August 1, 2017 (comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); Board letter to Andrea Tokheim dated July 24, 2017 (comprehensive consolidated supervision for Bank of Ireland Group plc); and *Unione di Banche Italiane, S.p.A.*, FRB Order 2016-01 (January 19, 2016).

The Board also has considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank;

(3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.⁹

The Netherlands is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, the Netherlands has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in the Netherlands, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. ING Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

ING Bank appears to have the experience and capacity to support the proposed representative office. In addition, ING Bank has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration ING Bank's record of operations in its home country and in the United States, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office.

ING Bank has committed to make available to the Board such information on the operations of ING Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, ING Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the ECB and the DNB may share information on ING Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that ING Bank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the ECB has no objection to the establishment of the proposed representative office.

The Board has also considered whether ING Bank's proposal would present a risk to the stability of the United States. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of ING Bank in its home country; the scope of ING Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising ING Bank in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

⁹ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

On the basis of all the facts of record and subject to commitments made by ING Bank, ING Bank's application to establish the proposed representative office is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹⁰ Should any restrictions on access to information on the operations or activities of ING Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by ING Bank or its affiliates with applicable federal statutes, the Board may require termination of any of ING Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by ING Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective October 20, 2017.

Ann E. Misback
Secretary of the Board

¹⁰ 12 CFR 265.7(d)(12).

¹¹ The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of Texas to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Texas or its agent, the Texas Department of Banking, to license the proposed office of ING in accordance with any terms or conditions that they may impose.